16-183

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1122.~~ 759

THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA, PLAINTIFF IN ERROR,

vs.

JOEL STONE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 27, 1881.

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INDEX.

	Original.	Print.
Caption to transcript	1	1
Petition	4	1
Præcipe for summons	21	6
Summons	23	6
Consent to withdraw answer	28	7
Record Entry, May 13, 1879	30	8
Amended answer	32	8
Stipulation to waive jury	62	16
Record entry, May 26, 1880	64	16
Affidavit of E. W. Eastman	66	16
Record entry, May 29, 1880	68	17
Trial notice, October term, 1880	70	17
Trial notice, May term, 1881	72	17
Record entry, May 19, 1881	74	18
Record entry, May 20, 1881	76	18
Special verdict and judgment entry	78	19
Bill of exceptions	83	20
Petition for writ of error	197	53
Writ of error bond	199	54
Writ of error	203	54
Original citation	206	54
Certificate to transcript	207	55

1, 2 Pleas in the circuit court of the United States for the district of Iowa, central division, at a term thereof begun and holden in the United States court-house, in the city of Des Moines, in said district, before the honorable George W. McCrary and honorable James M. Love, judges, on the tenth day of May, A. D. 1881.

Attest:

E. R. MASON, *Clerk.*

3 Be it remembered that heretofore, to wit, on the eighth day of April, 1879, came Joel Stone, by Nourse, Kauffman & Co. and W. O. Curtis, his attorneys, and filed in the clerk's office of said court his petition against the Independent School District of Steamboat Rock, Hardin County, Iowa, which said petition is in the words and figures following, to wit:

4 In United States circuit court, district of Iowa.

JOEL STONE, PL'FF,
agt.
THE INDEPENDENT SCHOOL DISTRICT OF Steamboat Rock, Hardin County, Iowa, defendant.

The plaintiff, Joel Stone, a citizen and resident of the State of New York, brings this his action against the Independent School District of Steamboat Rock, Hardin County, Iowa, a body corporate duly created, organized, and existing under and by virtue of the laws of the State of Iowa relative to the incorporation of independent districts for school purposes, and a citizen of the State of Iowa, and for cause of action against said defendant states:

That on or about the first day of November, 1869, the said defendant, being a corporation created, organized, and existing under the laws of the State of Iowa, as aforesaid, for school pur-
5 poses, and being incorporated as an independent school district, under and by virtue of the laws of said State and being duly authorized by chapter 98 of the acts of the twelfth general assembly of Iowa aforesaid to issue bonds for the purpose therein specified, and having then taken the preliminary steps therefor, as by law required, did execute and deliver to Foster Brothers, or order, the payees therein named, its eight negotiable school bonds in writing for the sum of five hundred dollars each, dated on that day and numbered two, three, four, five, six, nine, eleven, and fourteen, with interest coupons thereto attached, as hereinafter stated, the aforesaid bonds numbered two & three maturing May first, 1874; those numbered four, five, & six, on the first day of May, 1875; the one numbered nine, on the first day of May, 1876; and those numbered eleven and fourteen, on the first day of May, 1877; the bonds eleven and fourteen aforesaid being payable to bearer and delivered to said Foster
6 Brothers, as aforesaid, and all for value received therefor; and in and by which bonds defendant agreed to pay to Foster Brothers, or order or bearer, as aforesaid, of the Hardin County Bank, at Eldora, Iowa, the sum of five hundred dollars upon each thereof, at the date of the maturity of the same, as aforesaid, with ten per cent. interest from such maturity, and with ten per cent. semi-annual interest thereon upon the first day of May and November following the date

of said bonds respectively, upon the presentation of the interest c'upons attached thereto as hereinafter stated; that a copy of one of the said school bonds is hereto annexed, marked "A," and made a part hereof, with the same purpose and effect as if incorporated in the body hereof, which copy is a copy of each of the said bonds, excepting as to number thereofs date of maturity as aforesaid, and plaintiff asks
that the said copy be taken and regarded as a copy of each of the
7 said bonds, modified as above as to number thereof and date of maturity of the same.

Petitioner further states that said defendant, simultaneously with the execution of the aforesaid bonds, and as a part and parcel of the same transaction, duly made, executed, and delivered with the aforesaid bonds its forty-five interest c'upons attached thereto of twenty-five dollars each, and payable to bearer, as follows: To bonds Nos. two and three, aforesaid c'upons numbers three to nine, both inclusive, c'upons No. three being due, May first, 1871, and the first of the remainder as to number each six months thereafter.

To bonds numbers five and six, c'upons Nos. three to eleven, inclusive, c'upons number three being due May first, 1871, and the first consecutive number of the remainder each six months thereafter.

To bond numbered nine, c'upons three to thirteen, inclusive, c'upons
number three maturing May first, 1871, and the first consecutive
8 number of the remainder each six months thereafter.

To bonds numbered eleven & fourteen, c'upons numbered fifteen maturing with the bond, on the first day of May, 1877.

That a copy of one of the said c'upons is hereto attached, marked B, & made a part hereof, with the same purpose and effect as if here incorporated, and the same is a copy of each of the said c'upons, excepting as to the number thereof & maturity of the same as aforesaid; and plaintiff asks that said copy be taken and regarded as a copy of each of the said c'upons, modified as above as to number and maturity of the same.

That each of the aforesaid bonds numbered 2, 3, 4, 5, 6, 9, and the c'upons thereto as aforesaid, payable to Foster Bros., or order, as aforesaid, were by them indorsed, negotiated, and transferred before the maturity of any thereof, the said indorsement being by writing the name
"Foster Bros." in blank upon the back of each of the said bonds.
9 That all of said bonds and coupons, by subsequent transfer & negotiation, ultimately came into the hands of plaintiff, for a good and valuable consideration paid therefor, and are now his property, no part of which have been paid, though due & demanded; that there is now due him thereon from the defendant the sum of five thousand one hundred and seventy-five thousand dollars, with ten per cent. interest upon four thousand dollars thereof, as follows: Upon $1,000.00 thereof, from May first, 1874; upon 1,500.00 thereof, from May first, 1875; upon $500.00 thereof, May first, 1876; upon $1,000.00 thereof, from May first, 1877, and six per cent. interest upon the coupons above set out & described from the time they respectively became due as aforesaid, and for all of which judgments hereinafter demanded.

And for a second and further cause of action against defendant, plaintiff states that on the first day of July, 1879, said defendant, a
corporation as aforesaid, by reason of the matters and things
10 above set out, in pursuance of law, & for value received therefor, duly made, executed, and delivered to Foster Bros. its ten certain written & printed school bonds of five hundred dollars, each numbered respectively seventeen to twenty-five, both inclusive, & one

numbered thirty, all dated on that day, and due on the first day of July, 1880, to the bearer thereof, at the Hardin Co. Bank at Eldora, Iowa, with ten per cent. interest thereon, payable semi-annually, as evidenced by the interest coupons hereinafter described, a copy of said bond number seventeen being attached hereto, marked C, and made a part hereof, which said copy is a copy of each of the aforesaid bonds excepting as to the number thereof, and plaintiff asks that the same be taken & regarded as a copy of each of the said bonds, modified as above as to number thereof.

That simultaneously with the execution of said bonds, and as a part and parcel of the same transaction, defendant duly made,
11 executed, and delivered with its aforesaid bonds its twenty c'upons to each thereof; each c'upon being for the sum of twenty-five dollars, and numbered from one to twenty, inclusive, numbered one of each thereof, being due January first, 1871, and the remainder consecutively by number each six months thereafter, excepting as to the aforesaid numbers 17, 18, 19, 20, & 21 aforesaid, from each of which interest coupon number one, due January first, 1871, have been detached; that said coupon above said, to and including the one numbered seventeen on each of said bonds, in all one hundred & sixty-five in number, with interest from maturity of the same respectively, are now due and unpaid, although demanded, no action being brought or claim made upon c'upons 18, 19, 20, yet to mature upon each of the said bonds.

A copy of one of said c'upons is hereto attached, marked D, all thereof being like said c'upon excepting as to number & date
12 of maturity, & plaintiff asks that said copy be taken and regarded as a copy of each thereof modified as to number and maturity as aforesaid; that each of said last-named bonds with coupons thereto as aforesaid, were by said Foster Bros. negotiated, assigned, and transferred before the maturity of any of said coupons, and by subsequent transfers & negotiations, ultimately came into the hands of plaintiff in due course of businesss, & for a good and valuable consideration paid therefor, and are now his property, and there is due him upon the coupons as aforesaid, the sum of four thousand one hundred seventy-five dollars with six per cent. interest upon each of said c'upons from the date of maturity thereof as aforesaid. Wherefore plaintiff asks judgment against the defendant for the sum of nine thousand two hundred & fifty dollars with ten per cent. interest upon four thousand dollars thereof, as follows:

13 On $1.000.00 from May first, 1874; on $1,500.00 from May first, 1875; on $500.00 from May first, 1876; on $1,000.00 from May first, 1877; and with six per cent. upon the remainder thereof, five thousand two hundred and fifty dollars, as follows:

On $125.00 thereof from January first, 1871; on $125.00 thereof from May first, 1871; on $250.00 thereof from July first, 1871; on $125.00 thereof from Nov. first, 1871; on $250.00 thereof from Jan'y first, 1872; on $125.00 thereof from May first, 1872; on $250.00 thereof from July first, 1872; on $125.00 thereof from Nov. first, 1872; on $250.00 thereof from Jan'y first, 1873; on $125.00 thereof from May first, 1873; on $250.00 thereof from July first, 1873; on $125.00 thereof from Nov. first, 1873; on $250.00 thereof from Jan'y first, 1874; on $125.00 thereof from May first, 1874; on $250.00 thereof from July first, 1874; on $75.00 thereof from Nov. first, 1874; on $250.00 thereof from Jan'y first, 1875; on $75.00 thereof from May first, 1875; on $250.00 thereof from July first, 1875; on $25.00 thereof from Nov. first, 1875;
14 on $250.00 thereof from Jan'y first, 1876; on $25.00 thereof from

May first, 1876; on $250.00 thereof from July first, 1876; on $50.00 thereof from May first, 1877; on $250.00 thereof from Jan'y first, 1877; on $250.00 thereof from July first, 1877; on $250.00 thereof from Jan'y first, 1878; on $250.00 thereof from July first, 1878; on $250.00 thereof from January first, 1879, and the costs of this action.

(Signed) NOURSE, KAUFFMAN & CO. AND
W. O. CURTISS,
Plaintiff's Attorneys, Des Moines, Iowa.

UNITED STATES OF AMERICA,
District of Iowa, ss:

I, W. O. Curtiss, of Des Moines, in said State, being duly sworn according to law, depose and say that I am one of the attorneys for plaintiff in the foregoing entitled action, and as such attorney have in my possession the bonds & interest coupons sued on in said action
15 for collection, and that the allegations of the foregoing petition are true, as I verily believe.

(Signed) W. O. CURTIS.

Subscribed in my presence by W. O. Curtiss, & by him sworn to before me this 8 day of April, A. D. 1879.

(Signed) E. R. MASON,
Clerk U. S. C. C. Dist.

16 EXHIBIT A.

No. 2.] [$

THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN CO., IOWA.

The Independent School District of Steamboat Rock, Hardin Co., Iowa, promises to pay to Foster Brothers, or order, at the Hardin County Bank, at Eldora, on the first day of May, 1874, five hundred dollars, for value received, with interest at the rate of ten per cent. per annum, said interest payable semi-annually on the first day of May and November in each year thereafter, at the Hardin County Bank, at Eldora, on the presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of school directors by authority of an election of the vote's of said school district, held on the thirty-first day of July, 1869, in conformity with the provisions of chapter 98 of acts 12th general assembly of the State of Iowa.

(On margin:) Countersigned by Wm. Campbell, treasurer of school district.

(Written across the face in red ink:) $500.00.

In testimony whereof the said Independent School District, by
17 the board of directors thereof, have caused the same to be signed by the president and secretary this first day of November, 1869.

(Signed) R. C. WRIGHT.
President of the Board of Directors.

T. H. ROBERTSON,
Secretary of the Board of Directors.

Indorsed on back:

"FOSTER BROTHERS."

EX. B.

C'upon. [$25.00

Treasurer of Independent School District, Steamboat Rock, Hardin Co., Iowa, will pay the holder hereof on the first day of May, 1871, at Hardin County Bank, at Eldora, twenty-five dollars, for interest due on school-house bond No. 2.

R. C. WRIGHT,
President.

T. H. ROBERTSON,
Secretary.

18 EXHIBIT C.

No. 17.] [$500.00.

THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN CO., IOWA.

The Independent School District of Steamboat Rock, Hardin Co., Iowa, promise to pay to bearer at Hardin County Bank, Eldora, on the first day of July, 1880, five hundred dollars, for value received, with interest at the rate of ten per cent. per annum; said interest payable semi-annually on the first day of July & January in each year thereafter at Hardin County Bank, Eldora, on the presentation and surrender of the interest coupons hereto attached.

This bond is issued by the board of school directors by an authority of an election of the voters of said school district held on the July 31st, 1869, in conformity with the provisions of chapter 98 of acts 12th general assembly of the State of Iowa.

19 In testimony whereof the said Independent School District by the board of directors thereof have caused the same to be signed by the president & secretary this first day of July, 1870.

(Signed) J. M. COMSTOCK,
President of the Board of Directors.

T. H. ROBERTSON,
Secretary of the Board of Directors.

(Aross the face in red ink:) $500.00.
(On margin:) Countersigned Wm. Campbell, treasurer school district.

EXHIBIT D.

C'upon.

Treasurer of Independent School District of Steamboat Rock, Hardin Co., Iowa, will pay the holder hereof on the first day of January, 1871, at Hardin Co. Bank, twenty-five dollars ($25.00) for interest due on school-house bond No. 17.

J. M. COMSTOCK,
President.

T. H. ROBERTSON,
Secretary.

(Endorsed:) No. 2694. Law. In U. S. C. C. dist., Ia. Joel Stone v. The Independent School District of Steamboat Rock, Hardin Co., Ia. Petition. Filed Ap'l 8, '79. E. R. Mason, clerk. Nourse, Kauffman & Co., & W. O. Curtiss, for pl'ff.

20 And on the 8th day of April, 1879, a præcipe for summons was filed in said clerk's office, which said præcipe for summons is in the words and figures following, to wit:

21 To the clerk of the United States circuit court, district of Iowa.

Please issue process out of said court pursuant to the directions below:

Plaintiff: Joel Stone, citizen of the State of New York.

Defendant: The Independent School District of Steamboat Rock, Hardin Co., Iowa, citizen of Iowa.

Form of process: Summons.

On what brought: School bonds & c'upons.

Amount of claim: $16,000.00.

Amount of damages, "

Date of præcipe, April 9th, 1879.

When returnable: May term, 1879, viz, May.

(Signed) NOURSE, KAUFFMAN & CO., AND
W. O. CURTISS,
Attorneys for Plaintiff.

(Endorsed:) No . United States circuit court, district of Iowa. Joel Stone vs. The Independent School District of Steamboat Rock, Hardin Co., Ia. Præcipe for summons. Filed Apr. 8, 1879. E. R. Mason, c'k.

22 And on the 9th day of April, 1879, a summons was issued out of said clerk's office, which said summons was filed in said clerk's office on the 3rd day of May, 1879, together with the marshal's return of service thereon, in the words and figures following, to wit:

23 OFFICE OF U. S. MARSHAL,
Des Moines, Iowa, Apr. 10, 1879.

I hereby appoint J. M. Boyd my lawful deputy, to serve the annexed writ of summons in case of Joel Stone vs. Ind. School Dist of Steamboat Rock, Hardin Co., Ia.

(Signed) J. W. CHAPMAN,
U. S. Marshal, District of Iowa.

Return.

I have served the annexed writ as follows: I served the same on the Independent School District of Steamboat Rock, Hardin Co., Iowa, by reading the same to O. D. Green as president of said independent school district on the 14th day of April, 1879, at the town of Steamboat Rock, Hardin Co., Iowa, and at the same time and place I gave him a true copy thereof.

(Signed) J. W. CHAPMAN,
U. S. Marshal.
By J. M. BOYD,
Special Deputy.

24 I, J. M. Boyd, do on oath state that I have actually performed the service as stated in the foregoing return.

(Signed) J. M. BOYD.

Subscribed and sworn to by J. M. Boyd before me this 16 day of April, A. D. 1879.

[SEAL.] (S'g'd) Z. GILMAN,
Clk Dist. Ct.

25 UNITED STATES OF AMERICA.
District of Iowa:

To the marshal of the district of Iowa:

In the name of the President of the United States, you are hereby commanded to summon The Independent School District of Steamboat Rock, Hardin Co., Iowa, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States in and for the district of Iowa, on the first day of next term thereof, to be begun and holden at the city of Des Moines, on the second Monday of May next, it being the 12 day of May, A. D. 1879, then and there to answer unto Joel Stone, a citizen of the State of New York in a plea of debt on school bonds and coupons attached in the sum of sixteen thousand dollars, to the damage of said plaintiff in the sum of $16,000.00.

Hereof fail not, and have you then and there this writ. Witness the honorable Morrison R. Waite, Chief Justice of Supreme Court
26 of the United States, at the city of Des Moines, this the 9th day of April, A. D. 1879, and of the Independence of the United States the 103.

[SEAL.] (Signed) EDWARD R. MASON,
Clerk U. S. Circuit Court, District of Iowa.

(Endorsed:) No. 2694. Summons. Circuit court of the United States, district of Iowa. Joel Stone vs. Ind. School Dist. of Steamboat Rock. Filed May 3, 1879. E. R. Mason, clerk. W. O. Curtiss & N. K. & Co., attorney for plaintiff. Residence, Des Moines, Iowa.

27 And on the 13th day of May, 1879, the plaintiff filed his consent to withdraw answer, &c., which said consent is in the words and figures following to wit:

28 *Stenographer's letter.*

STONE
v.
IND. DIST. ST'BOAT ROCK.

LAW OFFICE OF NOURSE, KAUFFMAN & CO.,
Des Moines, Iowa, May 13, 1879.

We consent that def't may withdraw answer & take 10 days to file new answer.

(Signed) NOURSE, KAUFFMAN & CO., &
W. O. CURTIS,
For Pl'ff.

(Endorsed:) Stone vs. Ind. Dist. of Steamboat Rock. Consent to withdraw answer, etc. Filed May 13, 1879. E. R. Mason, clerk.

29 And on the 13th day of May, 1879, in the record of the proceedings of said court, is the following entry in said cause, in the words and figures following, to wit:

30 United States circuit court, district of Iowa, May term, 1879.

TUESDAY, *May* 13, 1879.

JOEL STONE
vs.
IND. SCHOOL DIS'T OF STEAMBOAT ROCK. } No. 2694. Law.

This cause coming on this day for hearing, and by stipulation of parties leave was given defendant to withdraw its answer from the files, and to file a new answer in ten days from this date.

31 And on the 21st day of May, 1879, the Independant School District of Steamboat Rock, by E. W. Eastman, its attorney, filed its amended answer in said clerk's office; which said amended answer is in the words and figures following, to wit:

32 In the United States circuit court, ss., district of Iowa, May term, 1879.

JOEL STONE
vs.
THE INDEPENDENT SCHOOL DISTRICT OF Steamboat Rock, Hardin County, Iowa. } Suit on bonds & coupons.

Now comes the above-named defendant, by its att'y, E. W. Eastman, & makes answer & defense to the petition of plaintiff.

And first, this defendant admits that on Nov. 1, 1869, it was an independent school district, legally organized in 1868, in Clay Township, in Hardin County, Iowa, under and by virtue of the statutes of Iowa, having only such powers as were by statute conferred upon it, and subject to all the limitations, restrictions, & prohibitions of the constitution & laws of the State of Iowa applicable to it.

I. To the first count of the petition this defendant denies that on the 1st day of Nov., A. D. 1869, or at any other time, it either exe-
33 cuted or delivered to Foster Brothers, or to any other person whomsoever, the eight negotiable bonds described in said first count, for $500 each, & numbered 2, 3, 4, 5, 6, 9, 11, & 14, or either of them, or either of the coupons thereto attached; denies that it was authorized by said chapt. 98 of the acts of the 12th general assembly of Iowa to either make, issue, or negotiate said bonds; denies that any of the preliminary steps, by that law required, had been taken to authorize this defendant to either execute, negotiate *of* deliver either of said eight bonds, or the coupons thereon; denies that either the said R. C. Wright, T. H. Robertson, or William Campbell or J. M. Comstock ever authorized by law to either make, issue, negotiate, countersign, or deliver said eight bonds, or either of them, in the name of this defendant; and denies that the acts of the said persons in executing, negotiating, & delivering said bonds, or either of them, or either of said coupons, were the acts of this defendant.

34 II. And for answer to the second count of plaintiff's petition, this defendant denies that on the 1st day of July, 1870, or at

any other time, it either made, executed, countersigned, or delivered to Foster Brothers, or to any person whomsoever, the "ten written & printed coupon school bonds for $500.00 each," or either of them, described in the second count of plaintiff's petition, and numbered 17 to 25, both inclusive, and one numbered 30, & dated July 1, 1870. Defendant denies that it either made, executed, or delivered either of the coupons described in said second count, and denies that the acts of either the said J. M. Comstock, or T. H. Robertson, or William Campbell, in executing, signing, countersigning, negotiating, or delivering either of said bonds or coupons were the acts of this defendant, and denies that either or any of said bonds or coupons are the bonds or coupons of this defendant, and denies that any election was holden,
35 or ever ordered to be holden, on the 31st day of July, A. D. 1869, as stated in said bonds, or that any of the requirements of said chapt. 98 of the acts of the 12th gen. assem. of Iowa, referred to in said bonds, had been complied with, and denies that this defendant acquired any power whatever to issue said bonds.

III. And for further defense to the petition of plaintiff, and to the matters set forth in each count thereof, this defendant says it is a quasi-municipal corporation, and has no inherent power to either make, issue, or negotiable bonds, or any negotiable paper. That at the date of each of said bonds, and on the 31st day of July, 1869, refer'ed to in each of said bonds, & before & since then, it was & is provided in the constitution of Iowa that "no political or municipal corporation shall be allowed to become indebted in any manner,
36 or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such corporation, to be ascertained by the last State and county tax list previous to incurring such indebtedness." No act of the general assembly of Iowa has ever been pas*t* authorizing a municipal corporation or independent school district in Iowa, to incur a greater indebtedness than is thus prohibited. This defendant never had any power confer'ed upon it to issue any negotiable paper, or any bonds, except what is confer'ed by said chapter 98 of the acts of the 12th general assembly refer'ed to in each of said bonds. The power there confer'ed is not a general power. It is granted only "for erecting and completing a school-house." It is limited by that act that "no district shall permit a greater outstanding indebtedness than an amount equal
37 to five per centum of the last assessed value of the property of the district." The only mode granted t oobtain the power to issue any bonds by that statute was, "when any independent district has procured a site for, and is ready to erect its school-house, it shall be lawful for the school board of such district to submit to the voters of their district, at the annual or a special meeting, the question of issuing bonds contemplated by this act, giving the same notice of such meeting as is now required to be given for the election of officers of such district, and the amount proposed to be raised by the sale of such bonds, which question shall be voted upon by the electors; and if a majority of the votes cast on that question be in favor of such loan, then the said school board shall issue bonds to the amount voted." On the 27th day of March, 1869, an election was ordered to vote on the question of issuing bonds to the amount of 5 per cent., which was
38 holden April 7, 1869, and resulted in "three votes in favor of the bonds, and forty-two votes against issuing them, and the proposition was declared rejected." No election by the people was ever after that held, and no order was ever made for one to be holden to

vote upon the question of issuing bonds, as required by said statute, and there is no record of the district that any such meeting was ever called or holden.

On or about the 25th day of August, 1869, the said Foster Brothers, at their special instance & request, entered into a contract with R. C. Wright, E. Clark, T. H. Robertson, & William Campbell, acting in the name of said Independent School District of Steamboat Rock, to build a school-house & two privies, all of brick, in said district, for $15,000.00 of the coupon bonds of said district, at 10 per pent. interest per annum, payable semi-annually, which contract was afterwards re-
39 duced to writing, and afterwards, as this defendant has since learned, though no record was made of it, the said persons, pretending to act as the board of officers of said district, procured thirty bonds, with coupons attached, to be made & printed in the name of this defendant, for $500.00 each, and numbered from 1 to 30, and all bearing a printed date of November 1, 1869, and all amounting to $15,000.00, all at 10 per cent. interest per annum, payable semi-annually, and each having some blanks to be filled in writing; and afterwards they caused each & all of said bonds to be delivered to said Foster Brothers on their said contract.

The said eight bonds described in the said first count of plaintiff's petition and the said ten bonds described in the second count of the plaintiff's petition are each & all part & parcel of said thirty bonds so executed & delivered on said contract. No record was made of the date or amount or time of delivery or time of maturity of said
40 bonds; but def't is informed and believes the date of said last-named ten bonds has been changed from Nov. 1, 1869, to July 1, 1870. On the 31st day of July, 1869, refer'ed to in each of said bonds and at the time of making said contract & at the time of making said bonds the then last-assessed value of property in said independent district of Steamboat Rock was only $49,861.00, and in fact a part of the territory had been set off to another district, so that in fact it was no more than $47,986.00. But 5 per cent. on $49,861.00 is only $2,493.05. At that time there was an outstanding indebtedness of $425.00, created by settlement, as the law required, with the district township when this ind. dist. was made, leaving only $2,068.05 for which this defendant had power to contract & beyond which it was prohibited to contract a debt, whereas the said contract was $15,000.00; and the said 30 bonds amounted to $15,000.00; and every bond was numbered,
41 showing that it belonged to a series of $500.00 bonds; and the plaintiff was notified by bond No. 30, sued on, that it was one of a $15,000.00 issue; and he was notified by bond No. 5, and by each bond above that, that it was in excess of what the district had power to contract a' debt. This defendant therefore says the making, executing, negotiating, & delivering each & all of said bonds & coupons described in said petition were not the acts of this defendant, and the said bonds are not the bonds of this defend., and each & every one of the bonds described in plaintiff's petition and the coupons thereto attached are, & when made & executed were, each and every one, illegal, spurious, fraudulent, & nul' & void against this defendant, and defendant is in no way liable to pay any part thereof, & is in no way indebted to the plaintiff.

Whereupon defendant asks judgment against the plaintiff for costs.

42 IV. And for a further defense to the petition of plaintiff and to each & every one of the bonds & coupons therein named this de-

fendant says that on the 1st day of August, A. D. 1872, A. S. McPherson & others who were residents, taxpayers, voters, & owners of real estate & personal property in said independent school district of Steamboat Rock, filed their petition in chancery in the district court of Hardin County; who sued for themselves & all the people & taxpayers of said independent school district. The question being one of general interest to many persons & the parties so numerous it was impracticable to bring them all before the court, and making the said Foster Brothers, R. C. Wright, T. H. Robertson, J. M. Comstock, the officers of said district, John Mosher & others, defendants.

Said petition among other things stated that in the year 1869 the
43 officers of said district were R. C. Wright, pres., E. Clark, vice-pres., T. H. Robertson, sec., Wm. Campbell, treas., & E. C. Rathborn, director. That at the last assessment prior to August, 1869, the total amount of taxable property in said independent district was only $49,650. That 5 per cent on said sum equaled only $2,482.50. That there was no money in the treasury & the district was indebted $425.00, reducing the amount to $2,057.50 beyond which the district was prohibited by law to contract a debt.

That on the 26th day of August, 1869, the said board of officers, at the request of said Foster Brothers, wrongfully, illegally, and fraudulently pretended to contract with said Foster Brothers, in the name of said independent district, to build a brick school-house on the land of said district & finish it by Feb. 1, 1870, and agreed to pay said Foster Brothers therefor $15,000.00 in the coupon bonds of said district at 10 per cent. interest, to be paid semi-annually, being about 32 per
44 cent. on the taxable property in the district, both parties at the time knowing they had no power to make the contract. That afterwards the bonds were delivered to said Foster Brothers, that no vote of the electors of said district was ever had authorizing said bonds or any of them to be issued. No record was made of the amount of each bond, or of the date of either bond, or of the time of actual delivery, or of the time of maturity of either bond. And said plaintiffs were unable to give a more definite description of them.

The petition prayed for an injunction to restrain the county treasurer from collecting any tax to pay said bonds or coupons, & to restrain this defendant & all the officers & the treasurer of said district from in any way paying either of said bonds or coupons. The injunction was granted, & the writ issued & duly served.

Such other & further proceedings were had that at the Dec. t'r, 1872, the defendant', by their att'ys, Porter & Moir, appeared & filed a
45 demurrer to the petition, and afterwards, the demurrer being overruled, the def'ts, on the 13th of May, 1873, by their said att'ys, filed their joint answer; and afterwards, on the 2d day of April, 1874, the said defendants, by their said att'ys, Porter & Moir, filed their cross-action against this defendant, in which the said defendant, John Mosher, among other things, stated that said $15,000.00 of bonds were issued to said Foster Brothers on a contract made August 25, 1869, to build a school-house; that there were 30 bonds of $500.00 each, issued on said contract & delivered to said Foster Brothers; that of said bonds John Mosher now owns & holds Nos. 1 to 30, both inclusive, except Nos. 26, 27, 28, & 29, which are now owned by the Sterling School Furniture Co., of Sterling, Ill., and asked for a decree for the face of certain bonds & coupsons against this def't.

Such other proceedings were had that during the trial before the referee the said defendants withdrew their said cross-action.

46 And in the further progress of the case it was appealed to the supreme court of Iowa to the June term, 1875, where the case was tried anew.

And afterwards at the June term, 1876, the said supreme court filed its unanimous opinion in said case, directing a decree to be filed in that court, which opinion is published in the 43 vol. of Iowa Reports on pages 48 to 74.

And afterwards, at the Dec. t'r, 1876, of said court a final decree was approved & filed in said court, which has in no way been amended or altered & now remains in full force, a certified copy of which is hereto attached and made a part hereof & marked "A," as all of which now appears by the record of said supreme court. It is there decreed that $416.90 of each & every one of said 30 bonds of $500.00, payable to said Foster Brothers or order or bearer, was nul' and void when made and for the same reason a like proposition of the coupons attached to said bonds is decreed to be nul' and void

47 All the bonds and all the coupons described in the plaintiff's petition in this case are part & parcel of the bonds & coupons described in the said decree as the bonds & coupons of John Mosher. The plaintiff received each & all the bonds & coupons on which this suit is brought of said John Mosher, who received them of said Foster Brothers knowing they were fraudulent. And the said bonds and coupons on which this suit is brought are part & parcel of the said bonds of each, of which $416.90 is there so decreed to be void, and by that decree this defendant "& the treasurer of said independent school district & each & every officer thereof & the board of officers thereof, & the said independent district of Steamboat Rock, are each & all perpetually enjoined from paying any of that part of either of the said bonds or of the said coupons hereby decreed to be void to any person whomsoever, & from levying any tax or making any appropriation to pay any part thereof."

48 This defendant respectfully represents that it is now bound by that injunction; that this hon. court has no jurisdiction or power in this collateral action or in any way to supersede, annul', or in any way modify the said injunction, or in any way release this defendant therefrom. It is among other things there decreed that the sum of $83.00 of each & every one of the said bonds was legal & valid when executed & was subject to 10 per cent. interest per annum from the date of the bond, payable semi-annually, and that proportion of each of said coupons is decreed to be valid. This sum will be subject to be credited with any & all payments that have been made or either of said bonds or coupons thereon since the issuing of said bonds.

This defendant therefore claims the following credits:

May 1, 187[illegible], the said board of officers of said ind. district paid $25.00 of the money of this defendant on each of said eight bonds

49 No. 2, 3, 4, 5, 6, 9, 11, & 14 described in the first count of plaintiff's petition & took off the first or number one coupon on each of said bonds. Defendant claims that by right & by virtue of said decree that sum should be credited, thus reducing each of said eight bonds to $62.26 May 1, 1870.

And afterwards on the 1st of Nov., 1870, the said board of officers paid $25.00 more of the money of this defendant on each of the aforesaid eight bonds and took off the second or coupon No. 2, which coupons this defendant now holds of each of said eight bonds. And this defendant claims a credit of that sum as aforesaid on each of said eight bonds, thus reducing each bond to $40.37 on Nov. 1, 1870, and re-

ducing the interest on each coupon in the same ratio*n*, that is to $2.02 after Nov. 1, 1870, instead of $25 as claimed by pl'ff's.

This defendant further says that the said 10 bonds, being Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25, & 30, named in the second count of plaint-
50 iff's petition were, as before stated, originally dated Nov. 1, 1869, and the date was changed to July 1, 1870, and by said decree the amount of each of said bonds was decreed to be only $83.10 when executed.

On January 1, 1871, the said board of officers paid $25.00 of the money of this defendant on each of said first five bonds Nos. 17, 18, 19, 20, & 21, and took of' the first or coupon No. 1 from each bond, which coupons def't now hold'. This defendant now claims that in justice and by said decree that sum should be credited on each of said bonds at that date, thus reducing each of said five bonds to $62.26 on January 1, 1871, and reducing the interest or coupon on each bond in like ratio*n* after that date, each coupon or semi-annual interest after that date being only $3.11, instead of $25.00 as claimed by plaintiff. No payment has been made on the last five bonds named, being No. 22, 23, 24, 25, & 30, & by the decree each coupon thereon is reduced
51 to $4.15½ instead of $25, as claimed by pl'ff.

And having fully answered the plaintiff's petition, defendant asks judgment against the plaintiff for any and all costs that may be hereafter made.

(Signed) E. W. EASTMAN,
Att'y for Defendant.

I, E. W. Eastman, the above-named att'y, do make oath & say that I have thoroughly investigated the matters stated & set forth in the foregoing answer, & have written it from my own knowledge of the facts, & I know more about the matter than any officer of the defendant, & the matters stated & set forth in the foregoing answer are true as I verily believe.

(Signed) E. W. EASTMAN.

Subscribed and sworn to before me by E. W. Eastman, May 20th, 1879.

[SEAL.] (Signed) Z. GILMAN, *Clk D. C.*

52 EXHIBIT A.

Supreme court of Iowa, December term, 1876.

A. S. MCPHERSON ET AL., APPELLANTS, *vs.* FOSTER BROTHERS ET AL. } 6007. Appeal from Hardin dist. court.

This cause having been submitted to this court at the June term, 1875, on appeal for trial de novo, the court at the April term, 1876, filed its opinion, ordering the following decree: The court finds that the plaintiffs are resident taxpayers and owners of real estate in the independent school district of Steamboat Rock, Hardin County, Iowa, and prosecute this suit for all the people and taxpayers of the district as well as for themselves, the question involved therein being of common and general interest to all the taxpayers of the district who are so numerous that it is impracticable to bring them all before the court. The court further finds that personal service was made on the defendants Foster Brothers, and on the members of the

53 board of officers of said district, and John Mosher, H. Mosher, Thomas S. Beals, and the Exchange Bank of Conondagua, all residents of Conondagua, New York, were served by publication, as provided by law, and the defendants appeared, by their attorneys, Porter and Moir, and answered jointly, and the said John Mosher and the Sterling School Furnishing Company of Sterling, Illinois, by said attorneys, filed a cross-action. That in the progress of the trial below said cross-action was withdrawn.

The court further finds that on or about the 26th day of August, A. D. 1869, the defendants Foster Brothers entered into a contract with R. C. Wright, president of the said district, E. Clark, vice-president, T. H. Robertson, sect'y, W. Campbell, treasurer, and E. C. Rathborn, director, and all constituting the board of officers of said independent district, by which the said Foster Brothers agreed to build and finish a school-house and privy of brick on the land of and for said
54 independent school district for the sum of fifteen thousand dollars in the bonds of said independent school district of Steamboat Rock, bearing ten per cent. interest, payable semi-annually, and afterwards, on the first day of November, 1869, said bonds were issued with interest coupons attached, and they were all delivered to said Foster Brothers on said contract. The court further finds that by the last assessment of property in said independent district for State and county purposes before the making said contract, and before the issuing of said bonds, the whole amount of taxable property in said independent district was $49,861.00. That by the constitution and laws of Iowa said independent district was prohibited from becoming indebted in any manner for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within said
55 district, to be ascertained by the last State and county tax-list, previous to the incurring of such indebtedness. The court finds that five per cent. of said $49,861.00 is only $2,493.05, and the remainder is $2,057.50, which is the largest amount of debt which said district could contract or which could be contracted in the name of said independent district at the time of making said contract or at the time of issuing said bonds. The court finds that there was thirty bonds issued, each for five hundred dollars, all at ten per cent. interest, payable semi-annually, all dated November 1st, 1869, and numbered from one to thirty, both inclusive, and payable at different times after date, but the dates of payment does not fully appear. Each bond has semi-annual coupons attached, each coupon being for twenty-five dollars and starting from said date of the bonds. The court further finds that the defend-
56 ant John Mosher is now the holder and owner of said thirty bonds except Nos. 26, 27, 28, and 29, which last four named bonds Nos. 26, 27, 28, and 29 are held and owned by the Sterling School Furniture Company, of Sterling, Illinois. The court further finds that at the time of making said contract and issuing said bonds thereon the independent school district of Steamboat Rock had no legal power to create a greater indebtedness that the said sum of $2,493.03, but it was by the law and constitution of the State of Iowa prohibited from so doing, and every person dealing with said district or the officers of said district, or purchasing said bonds, were bound to take notice of the laws and constitution of Iowa, and was required for that reason to look into the powers of said independent district and examine the acts of the officers by whom the bonds were issued to ascertain whether the law au-
57 thorized the bonds and conferred the authority upon the said district and its officers to issue them.

The court further finds that the said thirty bonds, with the coupons thereto attached, were issued for the entire amount of said $15,000 so contracted to be paid, all bearing date Nov. 1st, 1869, and all issued at the same time, so that there is no priority in the bonds; so that each bond contains one-thirtieth part of the said $2,493.05, being eighty-three dollars and ten cents, which is valid, and each bond also contains one-thirtieth part $12,506.95 (the invalid part of said $15,000.00), which is invalid, the amount so included in each bond being four hundred & sixteen $\frac{95}{100}$ dollars which is invalid in each of said bonds, and not binding on said district.

It is therefore ordered and decreed that the sum of four hundred and sixteen $\frac{95}{100}$ dollars of each and every one of said thirty bonds of five hundred dollars each, dated Nov. 1st, 1869, and payable to
58 Foster Brothers or order, is null and void for the reason that the said independent school district of Steamboat Rock had no legal or constitutional power to create the debt represented by that portion of said bonds, but was prohibited from so doing, and for the same reason a like portion of the coupons attached to each of said bonds is hereby decreed to be null and void, and the treasurer of said independent school district, and each and every officer thereof, and the board of officers thereof, and the said independent district of Steamboat Rock, are each and all hereby perpetually enjoined forever paying any of that part of either of the said bonds or of the said coupons hereby decreed to be void to any person whomsoever, and from levying any tax or making any appropriation, either directly or indirectly, to pay any part of the said sum or interest thereon hereby decreed to be void.

59 And it is further ordered and decreed that the sum of eighty-three dollars and ten cents ($83.10) of each and every one of said bonds was legal and valid when executed, and was subject to ten per cent. interest per annum from the date of said bonds, payable semi-annually, and that proportion of each of said coupons is decreed to be valid. This sum will be subject to be credited with any and all payments that have been made on either of said bonds or coupons thereon since the issuing of said bonds. And it is further ordered and decreed that the plaintiffs herein have and recover their costs herein expended in the manner of and for the use and benefit of said independent school district of Steamboat Rock, taxed at $160.70, and one-thirtieth part thereof is hereby applied on each and every one of said bonds, at the date and day the opinion of this court was filed in this case at the April term, A. D. 1876.

60 I, E. J. Holmes, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the opinion of said court in the case of A. S. McPherson et al., appellants, vs. Foster Brothers et al., as full, true, and complete, as the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 14th day of October, A. D. 1878.

[SEAL.] (Signed) E. J. HOLMES, *Clerk.*

(Endorsed:) Joel Stone vs. The Independent School District of Steamboat Rock. No. 2694. Amended answer. Filed May 21, 1879. E. R. Mason, clerk. E. W. Eastman, att'y for def't.

61 And on the 5th day of November, 1879, a stipulation to waive a jury was filed in said clerk's office; which said stipulation is in the words and figures following, to wit:

62 In circuit court of United States, Oct. 29, 1879.

JOEL STONE
vs.
THE IND. SCHOOL DIST. OF STEAMBOAT ROCK. } No. 2694. Suit on bonds & coupons.

It is hereby agreed to waive a jury in this case and try the case before the court; and to try the case on Wednesday, the 12' day of November, 1879, & not before that day; & if not reached for trial that day to try as soon thereafter as it can be heard by the court.

(Signed) NOURSE, KAUFFMAN & JACKSON AND
W. O. CURTISS, *For Pl'ff.*
E. W. EASTMAN, *Att'y for Def't.*

(Endorsed:) No. 2694. Joel Stone vs. Ind. School Dist. Steamboat Rock. Stipulation to waive jury & try to the court. Filed Nov. 5, 1879. E. R. Mason, clerk.

63 And on the 26th day of May, 1880, in the record of the proceedings of said court is the following entry in said cause, in the words and figures following, to wit:

64 United States circuit court, district of Iowa, May term, 1880.

WEDNESDAY MORNING, *May 26th*, 1880.

JOEL STONE
vs.
INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK } 2694.

This cause coming on this day for hearing was continued.

65 And on the 29th day of May, 1880, an affidavit was filed in said clerk's office, which said affidavit is in the words and figures following, to wit:

66 JOEL STONE
vs.
THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK. } No. 2694.

I, E. W. Eastman, att'y for defendant, do make oath & say that I agreed to waive a trial by jury in the above-entitled at the last term of this court specially to obtain a trial at that term of the court, & did not intend the waiver to extend beyond that term of the court.

(Signed) E. W. EASTMAN,
Att'y for Def't.

Subscribed and sworn to before me May 26, 1880.

(Signed) E. R. MASON, *Clerk.*

(Endorsed:) # 2694. Stone vs. Ind. Dist. of Steamboat Rock. Affidavit of E. W. Eastman. Filed May 29, 1880. E. R. Mason, clerk.

67 And on the 29th day of May, 1880, in the record of the proceedings of said court is the following entry in the said cause, in the words and figures following, to wit:

68 United States circuit court, district of Iowa, May term, 1880.

SATURDAY, *May 29th*, 1880.

JOEL STONE
vs.
INDEPENDENT SCHOOL DISTRICT, STEAMBOAT ROCK. } No. 2694. Law.

Now on this day, upon the affidavit of E. W. Eastman, defendant's counsel, it is ordered that the stipulation filed herein, waiving a jury, be, and the same is hereby, set aside.

69 And on the 23rd day of September, 1880, a trial notice was filed in said clerk's office, which said trial notice is in the words and figures following, to wit:

70 In the circuit court of the United States in and for the district of Iowa.

JOEL STONE
vs.
THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK. } No. 2694. Law.

Trial notice.

To the clerk of said court:

Notice is hereby given that the above-entitled cause will be ready for trial on issues of law and fact at the next term of this court, to be held commencing on the third Tuesday of October, 1880.

(Signed) NOURSE, KAUFFMAN & JACKSON,
Att'ys for Pl'ff.

(Endorsed:) In circuit court U. S., dist. of Iowa. No. 2694. Law. Joel Stone vs. Ind. Dist., Steamboat Rock. Trial notice. Filed Sep. 23, 1880. E. R. Mason, clerk. N., K. & J., for pl'ff.

71 And on the 15th day of April, 1881, a trial notice was filed in said clerk's office, which said trial notice is in the words and figures following, to wit:

72 In circuit court of the United States, district of Iowa, central division.

JOEL STONE
vs.
INDEPENDENT SCHOOL DIST. OF ACKLEY. } No. 2694. Law.

Trial notice.

To the clerk of said court:

Notice is hereby given that the above-entitled cause will be ready for

hearing at the ensuing May term of said court upon the issues of law and fact arising therein.

(Signed) NOURSE, KAUFFMAN,
with W. O. CURTISS,
Att'ys for Pl'ff.

(Endorsed:) In circuit court U. S., dist. of Iowa. No. 2694. Law. Joel Stone vs. Ind. Dist., Ackley. Trial notice. N. & K. & W. O. Curtiss, att'ys for pl'ff. Filed Apr. 15, 1881. E. R. Mason, clerk.

73 And on the 19th day of May, 1881, in the record of the proceedings in said court is the following entry in said cause in the words and figures following, to wit:

74 United States circuit court, district of Iowa, May term, 1881.

THURSDAY, *May 19th*, 1881.

JOEL STONE
vs.
INDEPENDENT SCHOOL DISTRICT OF STEAMboat Rock. } No. 2694. Law.

This cause coming on this day for hearing, plaintiff appeared by Nourse and Kauffman and defendant by E. W. Eastman.

Then came a jury of twelve good and lawful men, to wit, Edward Ruggles, Geo. W. Bowne, I. K. Richardson, J. Donaker, Wm. Allen, W. D. Lucas, Harry Fulton, W. T. Little, Wm. T. Holmes, J. McInribe, Wm. Beezley, and Geo. A. McKay, who were duly and legally empannelled and sworn to well and truly try this cause according to the laws and evidence given them in court, and they having heard the statement of the case and a portion of the evidence were excused until nine o'clock to-morrow morning.

75 And on the 20th day of May, 1881, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit.

76 United States circuit court, district of Iowa, May term, 1881.

FRIDAY, *May 20th*, 1881.

JOEL STONE
vs.
INDEPENDENT SCHOOL DISTRICT OF STEAMboat Rock. } No. 2694. Law.

This cause came on this day for further hearing. Parties appear by their attorneys, and the jury came the same as on yesterday, and they having heard the conclusion of the testimony and a portion of the arguments, were excused until nine o'clock to-morrow morning.

77 And on the 21st day of May, 1881, in the record of the proceedings in said court is the special verdict of the jury and the judgment entry in said cause, in the words and figures following, to wit:

78 United States circuit court, district of Iowa, May term, 1881.

SATURDAY, *May* 21, 1881.

JOEL STONE
vs.
INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK. } No. 2694. Law.

This cause came on this day for further hearing. Parties appear by their counsel, and the jury come the same as on yesterday, and they having heard the conclusion of the arguments and charge of court, return into open court the following special verdict, to wit:

"We, the jury, find specially as follows:

1. That the defendant, The Independent School District of Steamboat Rock, by their proper officers, issued the bonds in suit (a correct copy of one of said bonds and coupons is set out in plaintiff's petition and all of said bonds and coupons are of the same form), and the bonds in suit are a part of an issue of fifteen thousand dollars, and at the time of the issue of said bonds said district was indebted in the sum of
79 four hundred and twenty-five dollars and had no money in the treasury.

2. That at the time said bonds were issued the assessed value of the property of said District of Steamboat Rock, defendant, as shown by the last assessment just before said issue of bonds, was the sum of forty-seven thousand nine hundred and eighty-six dollars ($47,986.00).

3. That bonds Nos. 2, 5, 6, 9, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 30 and the coupons belonging thereto were purchased by the plaintiff, Joel Stone, for value before the maturity of said bonds, and in good faith, without actual notice of any facts impairing their validity.

4. That bonds Nos. 3 and 4 and the coupons belonging thereto were purchased by John W. Choppel for value before the maturity of said bonds, and in good faith, without actual notice of any facts impairing their validity, and were sold and assigned by said John W. Choppel to plaintiff in September, 1878.

80 5th. That bonds Nos. 11 & 14 and the coupons belonging thereto were purchased by Josiah G. Leach for value before maturity of said bonds, and in good faith, without actual notice of any facts impairing their validity, and were sold and assigned by the executor of said Leach to the plaintiff in September, 1878.

6. That the whole amount of the bonds and coupons matured at the commencement of this suit is thirteen thousand six hundred eleven and $\frac{83}{100}$ dollars ($13,611.83), plaintiff not claiming to recover in this suit on those not matured when suit was brought under the direction of the court. The jury, the foregoing special findings of fact, find for the plaintiff a general verdict, and assess his damages at thirteen housand six hundred eleven and $\frac{83}{100}$ dollars.

(Signed) J. M. LOVE, *Judge.*

81 Whereupon it is ordered and adjudged that the plaintiff, Joel Stone, have and recover of defendant, The Independent School District of Steamboat Rock, in Hardin County, Iowa, the sum of thirteen thousand six hundred eleven and $\frac{83}{100}$ dollars ($13,611.83) with interest upon four thousand dollars thereof at ten per cent. per annum from this date, and with interest upon the remaining sum of nine thousand six hundred eleven and $\frac{83}{100}$ dollars at six per cent. per annum from

this date and the costs of this suit, taxed at $, and that execution issue therefor.

82 And on the 28th day of May, 1881, the defendant filed its bill of exceptions in said cause; which said bill of exceptions is in the words and figures following, to wit:

83 In circuit court United States, dist. of Iowa.

JOEL STONE
vs.
IND. SCHOOL DISTRICT OF STEAMBOAT ROCK.

Be it remembered that on the trial of the above cause the following agreed statement of facts was read in evidence to the jury:

84 In the United States circuit court, district of Iowa, ss, for A. D. 1879.

JOEL STONE
vs.
THE INDEPENDENT SCHOOL DISTRICT OF Steamboat Rock. } Suit on bonds & coupons.

The following statement of facts is hereby agreed to by both parties:

The Independent School District of Steamboat Rock, Iowa, was duly organized in the year 1868, & has ever since continued to be, an independent district.

The officers of the district from March 9, 1869, to March 20, 1870, were R. C. Wright, president; E. Clark, vice-president; T. H. Robertson, secretary; William Campbell, treasurer; an' E. E. Rathborn, director.

The officers from March 21, 1870, to March 20, 1871, were six directors, viz, J. M. Comstock, H. W. Kelley, S. F. Lathrop, D. B. Cartwright, S. A. Root, & R. C. Wright. J. M. Comstock was pres.; William Campbell, treas.; & T. H. Robertson, sec.

85 The officers from March 20, 1871, to March 11, 1872, were J. M. Comstock, pres.; and S. F. Lathrop, D. B. Cartwright, S. A. Root, R. C. Wright, & H. Holingback, directors; and D. W. Turner, treasurer; & T. H. Robertson, secretary.

Of these officers, E. E. Rathborn, J. M. Comstock, T. H. Robertson, and William Campbell are dead.

It appears by the record that March 15, 1869, "E. E. Rathbone was appointed a committee to see what amount the assessment of tax would bring to the independent district." March 27, 1869, "resolved to have a meeting of the district to vote for or against issuing bonds of the ind. district to amount of 5 % to build school-house."

April 7, 1869, "opened the polls for an election of the electors of said ind. district to vote for and against issuing bonds of the said ind. district to the amount of 5 % to build a school-house, and resulted as follows:

"For bonds as above there were cast three votes, against bonds
86 as above there were cast forty-two votes; when the board announced that the proposition was rejected *a* ballot of the electors of said district."

There is no record that any order was ever made for another vote to issue bonds.

There is no record entry from April 30 to July 31, 1869, when the following entry was made:

"Board met according to legal notice; on motion of T. H. Robertson, J. H. Allen was appointed sec. pro. tem.; and then proceeded to vote on the proposition to bond said ind. dist. for the purpose of building a school-house. Poles were kept open till 4 o'clock & fifteen minutes p. m., when the votes were counted, resulting in twenty-six votes in favor of bonding said ind. dist. and none against.

"On motion, board adjourned.

"R. C. WRIGHT, *Pres.*

"J. H. ALLEN, *Sec. pro tem.*"

August 16, 1869, "on motion, the board adopted brick for said building."

"Committee to secure lots for site for said building urged to be
87 prompt in securing the Green lot."

"On motion of Wm. Campbell, the proposition of Messrs. Lee & Farley, to furnish 80,000 brick for said school-house by the 10th day of Oct., at 10 dollars per thousand, payment for same accepted in bonds at par of said ind. dist.; also, on motion, the proposition of Wm. O. Wickham, to furnish stone at $7.50 per cord, and lime at 45 cents per bushel, delivered for said building, bonds at par in payment therefor;" "on motion, H. B. Lawton was employed to draw up specifications for said building."

Aug. 21, 1869, board met, "plan & specifications drawn by H. B. Lawton, submitted, read, & adopted by this board to be followed by the contractor." "Adjourned to meet Sept. 10, at 3 o'clock p. m."

August 25, 1869, "board called to order by R. C. Wright, pres. Members all present except Rathbone." "On motion of Wm. Campbell, the contract for building school-house 40 by 55 feet, plan & speci-
88 fications to be embraced in contract, to be completed wholly, including furnaces, bill, &c.

"On motion, adjourned to meet this evening at 8 o'clock p. m."

Aug. 25, 1869, "board met pursuant to adjournment & called to order by R. C. Wright, pres. Members all present except Rathbone.

"On motion of E. Clark, the board adopted the plan & specifications of the Ackley school-house now being built.

"On motion, the board was ordered to make contract with Foster Bros. in accordance with the plan & specifications of the Ackley building at $15,000 *dollars.*

"On motion, board authorized the secretary to sign contract with Foster Bros. on behalf of the ind. dist. of Steamboat Rock.

"On motion, Mr. McIntire was authorized to purchase lot of Mr. Green of Cedar Rapids for ind. dist. of Steamboat Rock, Ia.

"On motion adjourned.

"R. C. WRIGHT, *Pres.*

"T. H. ROBERTSON, *Sec.*"

89 The foregoing is the entire entry of that day. No contract was ever placed on record, & there is no other record about it. An agreement was drawn up of which the following is a copy:

"This agreement made & entered into this twenty-sixth day of August, A. D. 1869, by & between the Independent School District of Steamboat Rock, Hardin Co., Iowa, of the first part, & Foster Brothers of Des Moines, Polk Co., Iowa, of the second part, witnesseth: The party of the second part do hereby agree, for the consideration hereinafter mentioned, to well & substantially erect, build, & completely fin-

ish on the land of the party of the first part, a brick school-house on or before the first day of February, A. D. 1870: To wit, to be of the same size, shape, materials, & finish, of the school-house now building at Ackley, Hardin Co., Iowa, and according to the original plan & original specifications of the said Ackley school-house together with the following additions & alterations: put in two Kyser's No. 4 stationary portable furnaces. The basement story
90 to be ten (10) feet high in the clear, & to have the same number of rooms as in the first story; foundation of stone to show one foot above the grade-line. The balance of one side walls to be done in brick eighteen (18) inches thick, leaving a hollow of two inches. The said parties do further agree to furnish & put up one 800 lb. bell furnished with all proper furnishings, further to build a privy with brick & wood walls above foundation, stone below. Stone walls (18) inches thick, vault ten (10), six (6) feet deep, brick wall nine inches thick, ceiling ten (10) feet high, building to be $\frac{1}{12} \times \frac{2}{24}$ feet, to be furnished outside with four (4) gables & cupola to correspond with school building.

"In consideration of the covenants and agreements being strictly kept & by the party of the second part, the party of the first part do hereby agree to pay or cause to be paid to the party of the second part the sum of fifteen thousand dollars in school bonds of the Independent School District of Steamboat Rock, bearing ten (10) per cent., payable
91 semi-annually, to be paid as follows; Eighty-five per cent. of the value of the work done & materials furnished on the ground to be paid monthly on the first of the month succeeding the performance of such work.

It is further agreed that the party of the second part shall furnish to the party of the first part an attested copy of the plan & specifications of the Ackley school-house.

In testimony whereof the above parties have set their hands this day and year first above written.

T. H. ROBERTSON,
Secretary for Board of Ind. Dist. Steamboat Rock.
FOSTER BROTHERS.

In presence of—
WARD RICHMOND.

Sept. 1, 1869. Board met. Campbell & Rathbone absent; object of the meeting to secure public square for site for new school-house on Mr. S. B. Cunningham's proposition to deed his interest in the square to Ind. Dist. of Steamboat Rock, I'a; on motion, the proposition was accepted.

Sept. 27, 1860. Board met; absent, Campbell & Rathbone.

92 On motion an order was drawn in favor of Foster Bros. for 16 dollars for print'g bonds.

On motion the bond of Foster Bros. & W. H. Luthill was accepted & the original contract amended as to give Foster Bros. the privilege of drawing their pay in bonds at such time as their interest may demand, at present 5,000 dollars. Secretary ordered to alter contract in accordance with above motion.

No amendment was ever put on record. There was no other description of this $5,000 of bonds, either of the number of them, the amount of either bond, or the time when they were to become due, on the records.

There was nothing done towards building the school-house and no other meeting was held till

March 12, 1870. Board met; called to order by the prest., R. C. Wright; Campbell & Rathbone absent.

On motion of Cartwright, & seconded by H. Francisco, the time of contract of Foster Bros. be extended to the 1st day of Sept., 1870, for the completion of school-house in Ind. Dist. of Steamboat Rock,
93 & that the pres. & sec. be instructed to sign said contract for ext*in*tion.

No other record about it.

April 7, 1870. On motion, plan was adopted to cap foundation with stone 1 foot thick, 2 feet wide, & as long as practicable.

Motion carried to issue Foster Bros. 2,000 dollars in bonds of ind. dist. in sums of 500 dollars each, being Nos. 11, 12, 13, & 14, inclusive.

The above is the only description there is in the record of date, amount, or term of payment of any bonds issued or delivered to Foster Brothers.

April 18, 1870. On motion, A. S. Root was employed to deliver cut stone from depot to ground of school building.

July 9, 1870. On motion the board ordered that an order be drawn on treasurer for amount of freight on stone now unpaid; carried ($135).

On motion, board authorized T. H. Robertson to make contract with Eldora parties for 70,000 brick & the hauling of same to school-house site.

94 Motion carried to issue an order on treasurer fo' $6.00 in favor of A. Campbell, for unloading stone from cars.

"Motion carried unanimously, to accept bond of Foster Bros. & ~~D~~. F. Allen, & issue thereon $8,000 *dollars* in bonds of Ind. Dist. of Steamboat Rock, & put same in hands of B. F. Allen."

There is no other description of these bonds in the record.

The foregoing contains all there is in the record in reference to issuing of bonds, & all there is in reference to what they were issued for, or of the date of the bonds, the amount, or No., or time of payment of the bonds.

It is admitted that there were, in fact, thirty bonds issued on the Foster Bros. contract to Foster Bros. of $500.00 each, & numbered from 1 to 30, both inclusive, & amounting in all to $15,000.00, and that no other bonds have been issued; and that bonds Nos. 11, 12, 13, & 14 were in fact signed and delivered after the resolution of the board, of date April 7th, 1870, above set out and pursuant thereto.

95 It is also admitted that the following record entry was made:

June 13, 1868. "On motion of A. A. Nayer, resolved, that the Independent District of Steamboat Rock pay to the district township of Clay the sum of $106.25, payable April 1st, 1869; $106.25, payable April 1st, 1870, with 6 % interest from April 1st, 1869; $106.25, payable April 1st, 1871, with 6 % interest from April 1, 1869; $106.25, payable April 1, 1872, with 6 % interest from April 1, 1869."

"Said notes were given to settle all claims the district township of Clay has against the independent school district of Steamboat Rock."

It is admitted that on the 31st day of July, 1869, & August, 25, 1869, there was no money in the treasury of the Ind. Dist. of Steamboat Rock.

The following record entry in the record of the Ind. Dist. of Steamboat Rock:

May 25, 1872. "On motion of W. W. McIntosh, the pres. & R. W. Green were appointed a committee to retain E. W. Eastman as att'y for this district.

96 May 31, 1872. "On motion of J. Dickenson, S. B. Cunningham was appointed sec. for balance of this year.

The committee appointed to employ E. W. Eastman as attorney beg leave to report that they have employed him as attorney for this district."

The amount of taxable property of said independent district by the last State & county assessment prior to July 31 & August 25, 1869, was $47,986.00.

The defendant agrees to the foregoing statement of facts.

(Signed) E. W. EASTMAN,
Att'y for Defendant.
NOURSE, KAUFFMAN & CO.
with W. O. CURTISS, *for Pl'ff.*

(Endorsed:) Joel Stone vs. Ind. School Dist. Steamboat Rock. No. 2694. Copy of agreed facts.

97 And be it also remembered that in addition to said agreed statement there was introduced in evidence a petition filed in the name of plaintiff in 1875, in the district court of Hardin Co., Iowa, signed by Porter & Moir, attorneys at law, in a certain cause commenced in said court, stating that plaintiff was the owner of seven of the thirty pounds referred to in pl'ff's petition, and that one John Masher was the owner of seven other of said bonds, and the remainder belonged to other parties named therein.

That John Porter, of said firm of Porter & Moir, testified that he wrote and filed said petition in said court; that he never saw the pl'ff Stone at or prior to that time, nor had any correspondence with him, and filed said petition by reason of consultations and directions from one John Masher only, and had no authority from Stone to file said petition, and that the suit was thereafter withdrawn.

The plaintiff also testified that he purchased in 1869 & 1870, and received into his possession at the time of purchase, all of said
98 bonds and coupons described in his petition except numbers 3 & 4 & 11 & 14, and some time in 1874 let the said John Mosher take said bonds to aid the said Mosher, as Mosher stated when he borrowed them, in collecting coupons belonging to other bonds of the same issue about which he Mosher was having trouble; and that the said Mosher had custody of said bonds for about four years, during which time plaintiff did not have possession thereof or of the coupons thereon and received no interest on the same.

Plaintiff further testified that he never brought or authorized any one else to bring or defend any suit for him, or in his name or behalf, and that he had no knowledge that any suit had ever been brought involving his bonds, and that Porter & Moir were never his attorneys, or authorized to act in any way in his behalf, and that the first knowledge he had of any suit relating to his bonds was acquired from
99 his counsel in the case now before the court, after the commencement thereof.

And be it further remembered that Howell Masher, a witness, testified that he was present when his father, John Mosher, sold to Mr. Isaiah G. Leech bonds numbered 11 & 14, and that Mr. Leech purchased the said bonds in April, 1870, and the bonds were delivered to him at that time and paid for.

E. A. Nash testified that Mr. Isaiah G. Leech died in April, 1872, and that by his will he was made executor, and found the above-mentioned bonds among the papers of said deceased, and that he retained possession of them as executor until he sold them to plaintiff in this suit, in 1878.

John W. Chappel testified that he purchased bonds Nos. 3 & 4 of John Masher November 30th, 1869, and that they were delivered to him at that time and paid for by him, and that he held the same until he sold and transferred them to plaintiff, in 1878.

100 And be it further remembered that no evidence was introduced or offered to contradict this testimony of plaintiff, and Howell Mosher, E. A. Nash, and John W. Chappel, unless it be found in the evidence admitted or offered as shown by this bill of exceptions.

And be it also remembered that defendant offered in evidence the following certified record:

In supreme court of Iowa, June term, 1875.

A. S. McPherson and others, appellants,
vs.
Foster Bro's, John Mosher and others, appellees.

E. W. Eastman, for appellants; Porter & Moir, for appellees.

101 *Index of abstract.*

Page 1 to 3. Petition.
" 4. Original notice.
" 4. Demurrer to petition.
" 4. Petition of Steamboat Rock to be plaintiff.
" 5 to 7. Answer.
" 7 & 8. Amended answer and cross-bill.
" 9 to 14. Plaintiffs' evidence.
" 14 to 20. Defendants' evidence.
" 21. Plaintiffs' rebutting evidence.
" 22 to 24. Original contract amendment.
" 24 & 25. Copy of bond and coupon.
" 25. Report of referee.
" 27. Defendants' exceptions to report.
" 27. Plaintiffs' motion to suppress evidence.
" 27 to 29. Plaintiffs' motion to set aside report.
" 30. Record entries.
" 31. Decree.
" 37. Agument of appellants.

102 In supreme court of Iowa, June term, 1875.

A. S. McPherson and others, appellants,
vs.
Foster Brothers, John Mosher, S. F. Benson, as treasurer of Hardin County, and others, appellees.
} Chancery and injunction.

Appeal from Hardin County district court.

Appellants' abstract and brief.

E. W. Eastman, for appellants; Porter & Moir, for appellees.

ABSTRACT OF PLEADINGS.

On the 1st day of August, 1872, the plaintiffs filed in the office of

the clerk of the district court of Hardin County, Iowa, a petition, stating their cause of action as follows: Plaintiffs state that they are residents, taxpayers, and owners of real estate in the Independent School District of Steamboat Rock, Hardin County, Iowa, and sue for themselves and all the people and taxpayers of said independent
103 district, the question being one of a common and general interest to many persons, and to all the taxpayers of said independent district, and the parties so numerous that it is impracticable to bring them all before the court; that in August, 1869, the officers of said district were R. C. Wright, president; E. Clark, vice-president; T. H. Robertson, secretary; W. Campbell, treasurer; and E. C. Rathbone, director; that at the last assessment prior to said August, 1869, the total amount of taxable property in said independent district was $49,650; that by the laws of Iowa then in force the greatest amount of indebtedness which could be contracted, and for which said district could be made liable, was, in all, five per cent. on said sum or last assessment, equaling $2,482.50; that there was then no money in the treasury, and said independent district was indebted to the township district $425, leaving the greatest amount of indebtedness that could then be contracted, $2,057.50; that on the 26th day of said Aug-
104 ust, A. D. 1869, said board of officers, at the request of Foster Brothers, wrongfully, illegally, and fraudulently pretended to contract with said Foster Brothers in the name of said district, by which said Foster Brothers were to build and finish a brick school-house on the land of said district, and finish it by Feb. 1, 1870, and agreed to pay said Foster Brothers the sum of $15,000 therefor in the bonds of said district at ten per cent. interest, payable semi-annually, thus creating an indebtedness of about 32 per cent. on all the taxable property of said district, both parties well knowing they had no right to make said contract; and by law at that time the greatest amount of tax that could be levied in any year for that purpose was one and a half per cent., amounting to only $894.95, while the interest is $1,500 annually, thus leaving $605.25 interest annually more than can be paid, and thus at once making the district insolvent. By the terms of said contract the said Foster Brothers were to be paid monthly as the work progressed.

105 On the 27th of Sept., 1869, the said board and Foster Brothers pretended to so modify said contract as to make the whole $15,000 to bonds payable in advance.

At the time of making and modifying said contract, the question of issuing bonds or creating an indebtedness to build said school-house had not been submitted to a vote of the people of said district, as by law required. The contract was fraudulent; the price so agreed to be paid was about three times as much as it was worth. From $5,000 to $6,000 was a round price. That on Sept. 27, 1869, without a vote of the people, and without the school-house being built, $5,000 of coupon bonds were issued in the name of said district, and delivered to said Foster Brothers; that said school-house was not built, and after the expiration of the time, on April 7, 1870, the board of officers extended the time, and then delivered $2,000 more of said bonds. The officers for 1870 were S. F. Lathrop, J. M. Comstock, H. W. Kelley, R. C. Wright, T. H. Robertson, and D. B. Cartwright; and on or about July 8, 1870,
106 without any vote therefor by the people, and without any school-house being built, the said board of officers delivered to said Foster Brothers $8,000 more in other coupon bonds, making, in all, $15,000 of 10 per cent. coupon bonds and interest payable semi-annu-

ality, which bonds are outstanding and hawked about in market-places. Said bonds and coupons are each and all illegal, without authority of law, and in violation of law, and said independent district is in no way legally or equitably, bound to pay any part of them. A large amount of the coupons of said bonds are past due, and the holders of them are demanding payment of them through agents and attorneys. Petitioners cannot now give the names of the bond-owners, but believe they live out of the State of Iowa. The board of officers applied to the legislature of Iowa to legalize the bonds, but it was not done. In the year 1871 the said board of directors wrongfully and illegally levied a school-house fund tax of four cents on the dollar,
107 on the property of said district, for the express purpose of paying said illegal coupons and bonds, and the tax has been regularly made out on the tax-books against the property and tax-payers of said independent district, and is in the hands of S. F. Benson, as treasurer of Hardin County, for collection, and he has collected a part, and is trying to enforce the collection of the rest, and for that purpose is about to advertise the real estate of said tax-payers for sale; and a tax of 10 mills for the year 1873 for school-house fund has been ordered to be levied by said school board, to pay said illegal coupons and bonds. The school board, Foster Brothers, and other defendants, and all persons owning or holding any of said bonds or coupons, and the treasurer of Hardin County, were defendants. Petition prayed for injunction to restrain the treasurer of Hardin County from collecting or receiving any more of said 4 per cent tax; to restrain the school
108 board of said district from levying any tax whatever to pay any of said bonds or coupons, and to enjoin said school board from paying or ordering or appropriating any money now in, or that may come into, the treasury of said district, to be paid on any of said bonds or coupons; and to perpetually enjoin the treasurer of said district from ever paying any of said bonds or coupons, or any order drawn for the payment thereof; and further praying for a decree declaring each and all of said bonds and coupons to be illegal and issued without authority of law, and in violation of law, and without consideration, and to be void, and for further relief.

The injunction was issued as prayed for.

The plaintiffs afterward filed their original notice, showing personal service on said Foster Brothers and on said R. C. Wright, E. C.
109 Clark, T. H. Robertson, Wm. Campbell, S. F. Lathrop, H. W. Kelley, and D. B. Cartwright, officers and members of said school board; and proof of service by publication on "John Mosher, H. Mosher, Thomas S. Beals, the Exchange Bank of Canandaigua, New York, and others.

And afterward the defendants, at the Dec. term, 1872, of said court, filed in said case their demurrer to the petition, as follows:

"Come now the defendants, by their attorneys, Porter & Moir, and demur to the petition of plaintiffs herein, and assign the following causes therefor," setting out nine different causes for demurrer; which demurrer was afetrwards overruled by the court.

And afterward, at the April term, 1873, the said Independent District of Steamboat Rock, by its attorney, filed its petition to be made plaintiff, as follows:

Now comes the Independent District of Steamboat Rock and
110 moves the court to permit it to be substituted as plaintiff in this case to prosecute this suit, for the reasons set forth in the annexed resolutions of the school board, which resolutions said: And

whereas, this independent school district is really the party interested in prosecuting said suit, therefore, resolved, that E. W. Eastman, the attorney prosecuting said suit, be requested to move, at the next term of said court, that the Independent District of Steamboat Rock be substituted as plaintiff in said case, and that it be allowed to hereafter prosecute such action in its name to final judgment.

And afterward, on the 13th day of May, 1873, the defendants filed their answer to the plaintiff's petition, setting up the following defense:

Come now the defendants, by their attorneys, Porter & Moir, and for answer to petition of plaintiffs herein answering say: Defend-
111 ants admit the Independent District of Steamboat Rock was legally organized; admit the contract of said district with said Foster Brothers to build a brick school-house for the sum of $15,000 in bonds of said district; deny that the district had no money at the time, and deny all fraud, and deny that the district had no legal authority to make the contract. Defendants deny the modification of the contract to make the pay due in advance; deny that the question of issuing bonds or contracting debt had not been submitted to the voters of the district; deny that the contract price was above a just amount for building the school-house. Admits the issuing the bonds to Foster Brothers. [For convenience it may here be stated that these bonds are all dated November 1st 1869; that there are thirty of them, and each for $500 with semi-annual coupons at 10 per cent; but by the records it appears that the bonds were ordered to be delivered at different
112 times. $5,000 were ordered to be delivered Sept. 27, 1869; $2,000 April 7th, 1870, and $8,000 July 8, 1870. They are numbered from 1 to 30 inclusive, and they became due at different times, and all issued on the contract and amendment thereto.] Defendants admit the officers of the district as stated in petition. Defendants admit the delivery of $8,000 bonds July 8, 1870, to Foster Brothers, making a total of $15,000; but deny that the school house was not then built, and deny that the question of building it and of issuing said bonds had never been submitted to the voters of the district. Admit that said bonds have been negotiated and are outstanding. Deny that the bonds are either without authority of law, or in violation of law, or that the district is not liable to pay them. Admit that some of the coupons by their face are due, and that holders are, by agents and attorneys,
113 demanding pay, and that plaintiffs did not know the names of the owners and that they are non-residents. Deny the levy of the 4 per cent. tax and all about it. Admit the 10 mill tax of 1872 for school-house funds. Admit that the subject is one of general interest, but deny that plaintiffs represent the best interest of the public, or that they sue for the whole or show any right of action in themselves.

And for further answer defendants say, that at the time said independent district let the said contract to said Foster Brothers to build said school-house there were 188 children, between the ages of 5 and 21 years, residing within said district, and entitled to attend public school therein; that said district neither owned or possessed a building in any way suitable for school purposes; that on Sept. 20, 1872, the enumeration showed 246 children in said district; that within the
114 territory of said district were sec. 21, SW. ¼ 22, W. ½ 27, all of 28, E. ½ of 29, and all of 32, 33, and 34 of Tp. 88, R. 19, being 4,120 acres, which, valued at $25 an acre, would amount to $103,000 and said territory embraces the town of Steamboat Rock, of over 1,000 inhabitants, with two hotels, several dry goods stores, two drug stores, and grocery stores, a banking house, valuable flouring mill, and sundry

other buildings used for trade and profit; and the value of annexations and fixtures and personal property aside from reality in the district is not less than $50,000, and hence a tax of 10 mills on the dollar would more than pay the interest on said bonds.

The answer further stated that, on the 2d Monday in March, 1870, an election was held in said district, at which the question of the erecting said school-house by Foster Brothers, in accordance with said con-
115 tract, was canvassed and thoroughly discussed by all the electors, and a large and unusual vote of 118 votes polled, of which 112 were for the erecting the school-house, and only 6 votes against it. At the said election 6 directors were elected, then known to be favorable to the erection of said school-house by said Foster Brothers, being S. F. Lathrop, H. W. Kelley, J. M. Comstock, A. S. Root, D. B. Cartwright, and R. C. Wright, and all elected by a majority of over 100 votes; that during the years 1868, 1869, 1870, and 1871, the electors and tax-payers and the citizens and officers of said district, by word and deed, favored the erection of said school-house by contract with said Foster Brothers; that a vote was taken at the annual meeting in 1869, for a 10-mill school-house tax, and a like vote was taken at each subsequent annual meeting in 1870, 1871, and 1872; that a part of the material for the school-house was procured and delivered on the site in 1869, and the school-house is now erected and completed, and
116 was accepted by said independent district on the 31st day of Dec., 1870, and ever since has been occupied for common-school purposes. And further, the said school-house is a large, well-built building, two full stories above basement, made of brick, with cut-stone window-sills, and is 43 feet by 60, with good architect and finish, and could not have been constructed for less than $15,000 in bonds, nor less than $12,000 in cash; that Sept. 16, 1871, said district had said school-house insured for $10,000, in the Ætna Insurance Co., at 2½ per cent., for five years; that of the school-house tax for 1870, 1871, and 1872, $4,500 have been paid into the county treasury, and about $2,341.83 paid over to the district, and no part of which has been paid to the parties entitled to it, or to defendants, or to others holding demands against the district. Defendants charge that a large part of said money has been applied for illegal purposes. On July 11, 1871, $63.29 of said money was transferred to the teachers' fund, and Dec. 11,
117 1861, $84 more was transferred to the teachers' fund; Dec. 11, 1872, $25 was paid to E. W. Eastman for legal services, supposed to have been rendered by him on behalf of some of plaintiffs. [He that pays his attorney lendeth to the Lord.—E. W. E.] March 17, 1873, the school board transferred one-third of the school-house fund to the contingent fund, the school-house fund then being over $25,000; all which was a fraud upon the rights of defendants.

Prayer of answer that plaintiffs' bill be dismissed; that each of defendants may have such relief as is equitable; that injunction be dissolved; that money voluntarily paid by tax-payers to school-house fund be paid to parties entitled to receive the same; that the adoption and ratification of the said contract with said Foster Brothers be established, and that plaintiffs be estopped from further controverting the same; and that the rights of the parties may be justly and equitably determined, the true value of the taxable property be found,
118 for the purpose of this proceeding, and that defendants have other and further relief.

PORTER & MOIR,
Def'ts Att'ys.

And afterwards, on the 2d day of April, A. D. 1874, the defendants filed in this case their amended answer and cross-bill, as follows:

Come now the defendants, by Porter & Moir, their attorneys, and for counterclaim represent that about the 26th day of August, 1869, the defendants, Foster Brothers, and the Independent School District of Steamboat Rock made and entered into a contract whereby said Foster Brothers agreed to erect a school-house for said district, and said district agreed to pay them therefor $15,000 in bonds of said school district, drawing 10 per cent. interest per annum; that they did erect said school-house in said district, and immediately after it was completed said district, on the day of , 1870, accepted the same and have continued to use it; that said school-house is large and
119 well-built, two stories above basement, made of brick and stone, 43 by 60 feet, and could not, at the time, have been constructed for less than $13,000 in cash; that in payment therefor said district issued thirty coupon bonds for $500 each, and all dated November 1st, 1869, drawing 10 per cent. interest, payable semi-annually, and the bonds and coupons in form negotiable, and delivered them to Foster Brothers in payment for erecting said school-house under said contract; that said Foster Brothers negotiated said bonds and coupons for the purpose of purchasing material used in said building, and to pay for work performed, whereby said district agreed to pay said Foster Brothers or their assignee $15,000 at the maturity of said bonds, and pay the coupons as they matured; that the first two of said bonds matures the first day of May, 1874, the second two Nov. 1, 1874, and so continue to mature every six months till all are due; that there are 240 coupons of $25 each now due, amounting to $6,000, and $810
120 interest due on the coupons. That of the 30 bonds so made by said district, John Mosher now owns and holds Nos. one to thirty, both inclusive, except Nos. 26, 27, 28, and 29, which are now owned by the "School Furniture Co.," of Sterling, Ill. Copy of bond No. 1 of said series is annexed to petition, all others being similar, except the number and time of maturity, and copy of coupon No. 1 is also annexed.

Defendants, owners of bonds, ask for an accounting, and that decree be rendered in their favor against said district; that the injunction be dissolved; that an order be made requiring the proper officers to pay over to defendants all the money in their hands, and that a decree be rendered establishing the full amount due to defendants from said district upon said bonds and coupons, to be a lien upon said school-house building and the lot or lots upon which the same is erected, and that it be sold on special execution and proceeds applied on de-
121 fendants' said claim and for costs and other relief.

PORTER & MOIR,
Defendants' Attorneys.

And afterwards at the trial before the referee, the following entry is made by the referee:

"Porter & Moir say they appear for John Mosher, of Canandaigua, N. Y., and for the Sterling School Furnishing Co., of Sterling, Illinois."

Abstract of plaintiff's evidence on the hearing before D. D. Chase, as referee.

The plaintiff first offered in evidence the contract of Foster Brothers of August 26, 1869. By this contract, Foster Brothers agreed to "well

and substantially build and completely finish, on the land of the independent school district of Steamboat Rock, a brick school-house on or before February 1st, 1870, to be of size and shape of the school-house in Ackley, and by same plan and specifications." And in "addition put in two of King's No. 4 stationary patent furnaces." The base-
122 ment story to be 10 feet high in clear; foundation of stone, brick wall to be 18 inches thick; also a 600 lbs. bell; also a brick privy 12 x 24, 10 feet high; vault 10 feet deep, building to have 4 gables and a cupola. Consideration to be paid, $15,000 in bonds of district, at ten per cent. semi-annually as follows: 80 per cent. of work and materials done and delivered to be paid monthly, the rest when work was done. Foster Brothers to furnish plans and specifications. Also amendment to contract of Sept. 29, 1869, as follows: "It is mutually agreed that the payments to be such an amount in bonds as they [the party of the second part] may find sale for, provided the amount called for is mutually agreeable." Also addition of March 7, 1870, extending time to complete the work to September 1st, 1870. Copies are attached to the petition.

Then the plaintiffs gave in evidence the following portions of the records of said independent district:

123 March 9, 1869. Election of officers: R. C. Wright, president; E. Clark, vice-president; E. C. Combs, secretary; Wm. Campbell, treasurer; and E. C. Rathbone, director. Voted that E. W. Eastman's bill for $20 be allowed for attending to suit between district, township, and independent district of Steamboat Rock. Voted a ten-mill tax to build a new school-house.

April 18, 1868. Adjourned meeting of the board. Voted that we build a school-house 42 x 50 feet and 24-feet posts; that we build of brick, with stone foundation; that we adopt plan drawn by H. B. Lawton; that secretary advertise for bids.

May 18, 1868. In absence of bids to build, resolved to postpone further action to build for the present.

June 13, 1868. Met the board of directors of district township of Clay, and settled. Voted to pay district township $106.25, April 1, 1868; $106.25, April 1, 1870; $106.25, April 1, 1871; and $106.25, April 1, 1872—in all, $425—at 6 per cent. interest, and gave notes.

124 November 14, 1868. Allowed P. H. Taylor for repairs $154.50.

March 15, 1869. Settled with old board. Balance of contingent fund, $149.22; do. teachers', $82.17; school-house fund nothing. Voted to appoint committee to see what amount the assessment of 5 per cent. taxes will bring to the independent district. Committee appointed to select site for new school-house.

March 27, 1869. Committee to select site reported. Voted to take block 33 for site. Submitted to vote of people.

April 7, 1869. E. C. Combs, secretary, resigned, and T. H. Robertson, appointed secretary. Opened polls to vote for and against issuing bonds of said independent school district to amount of 5 per cent. to build school-house on block No. 63, and resulted: for bonds, 3 votes; against bonds there were 42 votes.

April 30, 1869. Committee appointed to procure lots 7 and 8, in b. 20, or 2 and in b. 23, for site.

125 August 16, 1869. Board met. The plan of H. B. Lawton for school-house was adopted. Voted to purchase lot 8, in b. 20, of Dickinson, for $125, for site. Voted to build of brick. Committee to secure lots for site for school-house urged to be prompt in securing the Green lot. On motion of W. Campbell, the proposition of Lee & Farley

was accepted, to furnish 80,000 brick for school-house by the 10th day of October, at $10 per thousand; also, accepted proposal of W. O. Wickham to furnish necessary stone at $7.50 per cord, and lime at 45 cents per bushel, delivered. Wright, Cartwright and Campbell appointed to draw contracts with parties. H. B. Lawton appointed to draw specifications for building.

August 21, 1869. Board met. Specifications drawn by Lawton submitted, and adopted by the board. The president of the board ordered to advertise for sealed proposals for the entire work on school-house, or any separate part of it, till Sept. 10, as per plan and specifications. Adjourned to Sept. 10, 1869.

126 August 25, 1869. Board met. All present but Rathbone. On motion of Campbell, voted to contract for building school-house 40 x 55 feet, plan and specifications to be embodied in contract, to be wholly completed, including furnaces and bell. On motion of E. Clark the board adopted plan and specifications of the Ackley school-house, now being built. Voted to contract with Foster Brothers, in accordance with the plan and specifications of the Ackley building, at $15,000. On motion, McIntosh was authorized to purchase lot of Mr. Green, of Cedar Rapids, for site of school-house of independent district.

September 1, 1869. Board met. Voted to purchase public square of S. B. Cunningham for site of new school-house, it being understood that he was the owner of the interest in said square formerly owned by I. N. Lesh, and he to make quitclaim deed to district.

127 September 5, 1869. Board met. Voted that the school-house shall be so located that the front of school-house shall be in a line drawn east and west through the said square, making the building north of the line and up to it.

September 27, 1869. Board met. Order drawn to H. B. Lawton on school-house fund, $15. Order drawn to Foster Brothers for $16 for printing bonds. Bond of Foster Brothers and Wm. H. Tuthill accepted, and the original contract amended so as to grant Foster Brothers the privilege of drawing their pay in bonds at such time as their interests may demand, at present $5,000 (see order to alter contract). Cook, Campbell, and Cartwright appointed building committee. Adjourned. Next record of meeting March 12, 1870. Board met. Voted that contract with Foster Brothers be extended to 1st day of September, 1870, to complete school-house.

March 20, 1870. Annual meeting. S. F. Lathrop, H. W. Kelley, J. M. Comstock, A. S. Root, and D. B. Cartwright elected directors. Voted 10 mills tax forschool-house fund—5 mills contingent, and 5 mills teachers' fund.

128 March 21, 1870. Board met. $75 of school-house fund transferred to teachers' fund. Settled with treasurer. School-house fund in treasury, $419.37; teachers' fund, 21.59. New board organized by electing J. M. Comstock president, W. Campbell treasurer, and T. H. Robertson secretary. Secretary ordered to get attested copy of plan and specifications of school building of Foster Brothers.

April 7, 1870. Board met. Voted to cap foundation with stone 1 foot thick, 2 feet wide, and as long as practicable. Voted to issue to Foster Brothers $2,000 in bonds in sums of $500 each, being Nos. 11, 12, 13, and 14. Lathrop, Kelley, and Cartwright appointed building committee. Sub-contractor Jamison notified secretary that he held the board of directors responsible for contract money, and not Foster Brothers.

April 18, 1870. Board met. On motion J. M. Comstock was author-

ized to employ W. J. Moir as counsel for Independent District of Steamboat Rock. On motion A. S. Root was employed to deliver cut-
129 stone from depot to ground of school-house. Adjourned.

Next meeting July 8, 1870. Board met. Voted to issue to Foster Brothers $8,000 in bonds, that they may be enabled thereby to complete school-house according to contract. Comstock and Lathrop authorized to take bond and consult with proper legal authority in regard to same, and if correct to report to board.

July 9, 1870. Board met, Ordered that an order be drawn on treasurer for freight on stone now unpaid, $135; and ordered to A. Campbell for $6 for unloading stone from cars; order to Comstock for $9.40 for cash paid out. On motion the board authorized T. H. Robertson to make contract with the Eldora parties for 70,000 brick, and the hauling stone to school-house site. Motion carried to accept bond of Foster Brothers and Allen, and issue $8,000 in bonds of Independent District of Steamboat Rock.

October 19, 1870. Board met. On motion adopted the Sterling
130 Co. seat or desk. Motion carried to issue to J. M. Comstock order for $22.40 for expenses to Des Moines. Motion carried to pay interest on coupons overdue $6.25, and J. M. Comstock to forward same. Adjourned.

December 1, 1870. On motion a loan was made to Foster Brothers of $61.75 to pay freight on seats for school-house. December 3, 1870. On motion, Root, Wright, Cartwright, and Lathrop were appointed a committee to build privy. Adjourned.

March 13, 1871. Annual election of directors. Tax voted teachers' fund 10 mills, school-house fund 10 mills, contingent fund 5 mills.

March 20, 1871. New board met and organized. Settled with treasurer. In treasury, school-house fund $25.82, teachers' fund nothing, contingent nothing. Bills allowed, Noyes & Turner, lumber, $15; Carrier, stoves, $98.85.

April 12, 1871. Board met. The treasurer was instructed to pay pro rata interest on bond coupons. On motion the board unanimously voted a special tax on the property of the independent district
131 of three (3) per cent. to pay interest now due on the indebtedness. Adjourned.

March 21, 1872. Board met by chance, and called to order by J. M. Comstock. T. H. Robinson elected secretary, and D. W. Turner, treasurer. On motion, a tax of 10 mills was voted for school-house fund, 10 mills teachers' fund, and 5 mills contingent fund.

The plaintiff then introduced the deposition of S. F. Benson, treasurer of Hardin County, who testified:

I have been treasurer since January 1st, 1870; the valuation of taxable property in the independent district of Steamboat Rock for the year 1869, as shown by the tax-books, as assessed in the resident-list, was $42,411, and the valuation of the taxable property in said district, as assessed on the non-resident list, was $7,450, the total being $49,861; this, at a 5 per cent. tax, would give a total tax of $2,493.05; for the year 1871 there was levied and placed on the tax-book for collection for the different funds of said district: For teachers' fund, 10 mills
132 on the dollar; school-house fund, 45 mills on the dollar. There is no contingent fund on my books. For 1872 the tax for teachers' fund was 10 mills; for school-house fund, 10 mills, and contingent fund, 5 mills, on the dollar.

Both parties admit that of the 45 mills, 5 mills should have been contingent fund.

Deposition of E. Clark.

I reside in the independent district of Steamboat Rock; I was vice-president of the school-board of said district in 1869; I was present at the meeting of the said board in the afternoon and evening of August 25, 1869, when the contract was made with Foster Brothers; there was a gentleman there representing himself as one of the firm of Foster Brothers.

Ques. Can you state whether previous to that time there had been any order by the board to submit the question to the voters of said independent district to either contract a debt or to issue bonds to build the school-house which was ordered or contracted at that meeting?

133 Ans. There had been no such order of the board, and there had been no such election.

Ques. Have you a knowledge as to whether the said Foster Brothers, as represented there that evening, were informed or knew whether the board had authority to contract a debt of $15,000? If so, state what was said to him and what reply he made.

Ans. There were three plans submitted to the board by Mr. Foster, one for $15,000, one for $12,000, and one for a less amount, that I do not remember; William Campbell, a member of the board, said, before the board and Mr. Foster, that we were not authorized to issue bonds to build a house, even to the amount of the smallest plan. Mr. Foster answered, no matter for that, he would accept of the bonds such as they would issue. He then went on to say that they were building houses in different parts of the State and taking bonds under like circumstances.

Cross-examined:

134 I was elected vice-president in the spring of 1869, and held the office one year; I was present at the annual election in 1869; the meeting of the board was in the month of August, after that election that entered into the contract with Foster Brothers.

Ques. State what you know, if anything, about the electors in said independent district ordering the issue of additional bonds for the purpose of building said school-house in said independent district?

Ans. With a view to this school-house there was none.

Ques. Was there not at the spring election of the electors in 1869, bonds ordered to be issued for the purpose of erecting a school-house in said independent district?

Ans. There was not.

Defendants' evidence.

Defendants gave in evidence, the following portions of the records of said independent district:

April 18, 1968. The old school-house and lot were sold to A. A. Noyes, for $525.

135 June 13, 1868. Voted to adopt the bound'ry between the independent district and subdistrict No. 2, so as to run from a point 80 rods west of the SE. corner of sec. 29 N. to a point 80 rods north of the south line of sec. 29; thence E. to the line of sec. 21; also starting 80 rods W. of the SE. corner of sec. 27, and running S. 320 rods; thence W., 80 rods; thence S. to the S. line of Clay township.

December 3, 1870. On motion, the board authorized J. M. Comstock to receive key and take possession of the new school house. Thanks

voted to D. W. Johnson for his energy and fidelity in the erection of the new school-house, and for his gentlemanly conduct during his stay with us. Authorized school to commence next Monday.

Sept. 16, 1871. President and secretary were ordered to make deed of old school-house and lot to Granzen for $300, and, when paid, credited to school-house fund. Voted to accept rates of Ætna In-
136 surance Co. to insure school-house for $10,000, for a period of five years, at 2½ per cent. Order was drawn to D. B. Morse for premium on insurance $250.

Dec. 11, 1871. Board met. On motion, old teachers employed for winter term, to commence on first Tuesday in January. On motion, resolved to ask legislature of this State to legalize the issue of outstanding bonds. On motion, J. H. Comstock and T. H. Robertson was appointed a committee to prepare bill and present the same to the legislature, in accordance with above resolution.

April 2, 1872. The board met. R. C. Wright resigned. R. W. Green elected to vacancy. A. S. Root resigned. H. J. Hickok elected to vacancy. Order drawn on school-house fund sufficient to pay amount now due subdistrict No. 4 ($166.25). On motion, bond of T. H. Robertson, fixed at $500; D. W. Turner, bond as treasurer, fixed at $2,000.

May 31, 1872. Board met. Resolved that the office of secretary of this district be declared vacant, for the reason that T. H. Robert-
137 son, who was elected March 4, 1872, and bond fixed at $2,000, and at his suggestion reduced to $500, and he has failed to qualify. S. B. Cunningham was appointed secretary for the year. Committee appointed to employ E. W. Eastman as attorney reported that they had employed him, and he recommended the assistance of H. L. Huff.

March 17, 1873. Board met. Settled with secretary and treasurer. School-house fund drawn from county treasury, $964.29; paid out, $306.58; balance in the treasury, $657.70; teachers' fund drawn, $990.54; paid out, $1,022.97; in treasury, ; contingent fund drawn, $108; paid out, $106.45; balance in treasury, $205; there being but one outstanding order, and that, $77.50, to Mary J. Dale, on teacher's fund. Whereas, it has been a custom of the county treasurer to keep the school-house and contingent as one and the same fund, and has made his report to this board in the same way; consequently our treasurer drew all the money as school-house fund: Therefore, re-
138 solved, that the treasurer be authorized and directed to transfer one-third of said school-house fund to the contingent fund.

S. B. CUNNINGHAM called by defendants:

Have no record or knowledge that bonds voted by the board April 25, 1868, were ever issued; census taken by me, as secretary, of children in 1872 and 1873, is in auditor's office; I was at the district election in 1870; the record of March 20, 1870, on page 117, is all the record there is of that election.

(It is put in evidence by plaintiff.)

Defendants offered to show that at said election the issue was for and against the erection of said school-house under said contract with Foster Brothers; that those candidates in favor received 112 votes, and those opposed only 6 votes, and that it was understood by the electors that by the contract $15,000 of bonds were to be paid.

(Plaintiff objected; sustained.)

Cunningham further said: I have lived here since 1855; I think it was generally understood by the people, while they were building, that

the school-house was to cost $15,000, and that bonds were to be
139 issued to that amount; district has occupied school-house since December, 1870, for school, and has no other house.

Mr. FRISBE sworn:

Am auditor of Hardin County; this is the school-fund journal.

(Plaintiff objects to evidence. Overruled.)

In 1869 the number of children in independent district was 188; in 1873 number was 225.

S. F. BENSON sworn:

Am treasurer of Hardin County.

Ques. What amount of money has been collected by you for independent district of St'amboat Rock between April 1, 1874, and July 1, 1874?

(Plaintiff objects. Overruled.)

Ans. $132.81 school-house fund, and $43.13 teachers' fund.

Defendants then introduced S. C. MOWEN, a witness:

(Plaintiffs objected to the introduction of oral evidence. The case had been set for hearing on deposition, and the evidence was closed before the case was referred, except documents and records.

Objection overruled. Plaintiff excepted.)

Mowen said: I reside in Eldora; am carpenter and builder,
140 and have been for twelve years, and have superintended public works; in August, 1874, I made an examination of the school-house in question in the independent district of Steamboat Rock.

Ques. State what, in your judgment, is the expense of that building? Explain its construction, and tell how much, in your judgment, it would cost to erect it in 1869 and 1870.

(Plaintiff objected: 1st, the evidence is incompetent and inadmissable in this case under the issues made by the pleadings. Overruled. Plaintiffs except.)

Ans. I examined the building outside and inside; the material of which it is built is good; are 300,000 brick in it, worth $16 per thousand, $4,800; are 220 feet water-table, $220; are 256 perch stone work, $1,024; are 38 openings, stone sills, hoods, and caps, $380; are 16 openings in basement, sills, and caps, $64; are 2,000 yards of plastering, $800; frames, sash, and trimmings for 36 windows, $1,100; are 18,000 feet dimension-lumber, $450; are 9,475 feet flooring, $380; are 56,000 shingles, $350; are 2,000 lbs. nails, $125; 4,000 feet finish-
141 ing-lumber, $260; painting, $400; carpenter and joiner-work, $2,000; are 16 basement windows, $112; incidentals, $100; total cash value, $12,615 when built. I make my estimates of costs of material at the time house was built. A good contractor, who understood his business, and intended to do a good job, would not have taken the contract for less than my estimate. Have not allowed anything for profit, except joiner work might be a little less; did not include furnace and bell, or privies, or seats, or furniture; materials and workmanship is average.

O. P. MCGOON sworn.

(Plaintiffs object, as above. Overruled.)

I reside in Eldora; am carpenter and builder; have examined said

school-house, and approve the estimates of Mr. Mowen; helped him make them.

(Evidence taken under protest of plaintiffs, and witness not cross-examined.)

S. F. LATHROP sworn.

I reside in the independent district of Steamboat Rock, and have for 17 years; pay taxes on from $5,000 to $8,000.

142 Ques. How generally did the citizens know of the building of the school-house and of the manner of its building during its process of erection?

(Plaintiff objected as incompetent and immaterial; overruled.)

Ans. It was generally understood by all the people that the house was to cost $15,000, and that bonds were to be issued to pay for it; I think it was well understood before a bond was issued; my impression is that the foundation was laid in 1869, and the building erected and completed in 1870; the school-house question was generally talked up by our people, and well understood before it was erected; the contractors and builders of the house were Foster Brothers, of Des Moines; they furnished the materials and did the work, and delivered the house to the district in its completed condition. (Paper shown to witness purporting to be a certificate of facts, &c.) And—

Question. Do you know the signature attached thereto?

143 Ans. The first name is the signature of J. M. Comstock, who was at that time president of the board of the district; the second is the signature of T. H. Robertson, who was the secretary; the third is the signature of Wm. Campbell, who was then treasurer.

(Instrument offered in evidence; plaintiffs object. 1st. Pape' is not a transcript of a record, but purports to be a certificate of facts, which if true should be of record. 2d. The contract to build the school-house was made in August, 1869, and long before the date of this certificate, and the certificate could have had no influence to procure the contract to be made. 3d. The bonds, so far as known, were dated in 1869, before this certificate was made. 4. It is incompetent; it cannot bind the district; it cannot tend to legalize illegal bonds.

Objection sustained, and defendants except.)

The certificate is as follows:

We, the undersigners, of the board of directors of the independent school district of Steamboat Rock, do hereby certify that the school-house bonds issued by said district were authorized by a ma-

144 jority vote of the electors of said district at an election held on the 31st day of July, 1869, and are issued in all respects according to the laws of the State of Iowa.

J. M. COMSTOCK,
President of Board.
T. H. ROBINSON,
Secretary of Board.

STEAMBOAT ROCK, HARDIN CO., IOWA, *March* 8, 1870.

School board certificate.

STEAMBOAT ROCK, *July 1st*, 1860.

We, the undersigned, president, secretary, and treasurer of the board of directors of the independent school district of Steamboat Rock, Hardin County, State of Iowa, do hereby certify that the school bonds

issued by said district, to the amount of eight thousand dollars, by authority of a majority vote of the electors of said district, at an election held on the 31st day of July, 1869, are in all respects issued according to the school law expressed in section 118, chapter 98, of the acts of the twelfth general assembly of the State of Iowa, viz:

(Here follows copy of law referred to.)

Witness our hands and seals the day and year first above written.

145 (Signed) J. M. COMSTOCK, *President.*
T. H. ROBERTSON, *Secretary.*
WM. CAMPBELL, *Treasurer.*

Defendant then offered in evidence page 108 of records of said independent district, dated as follows:

IND. SCHOOL DISTRICT STEAMBOAT ROCK,
Steamboat Rock, Iowa, July 31, 1869.

Board met, according to legal notice.

On motion of T. H. Robertson, J. H. Allen was appointed secretary pro tem., and then proceeded to vote on proposition to bond said independent district for the purpose of building a school-house.

Polls were kept open till four o'clock and fifteen minutes p. m., when the votes were counted, resulting in twenty-six votes in favor of bonding said independent district, and none against.

On motion, board adjourned.

R. C. WRIGHT, *President.*

J. H. ALLEN, *Secretary pro tem.*

To which the plaintiffs made the following objections: 1. The last record of meeting of the board is on the other side of this leaf
146 in the record book, being page 107, and this record is page 108; and the record of last meeting before this record is under date of April 30, 1869. And there is no record of any order for such an election. There is no record of any order for any amount of tax money to be raised for building school-house. This record does not purport to be the contracting any specific amount of debt, or for issuing bonds for any specific amount, or for any specific purpose. The record is unintelligible, and is not a record of the vote of the legal voters to authorize the issuing bonds by the district. The record appears to be a record of a meeting of the board of directors, in which the board of directors took a vote improm'tu upon an unintelligent proposition, without any previous notice. The record appears to be signed by certain persons, and their signatures have not been proved.

(Objections overruled. Plaintiffs excepted, and record read in evidence.)

147 Plaintiffs' counsel here claimed and insisted that the court did not act upon the motion of the Independent District of Steamboat Rock to be made a party to this suit, and therefore it is not before the court as a party plaintiff in this suit.

The defendants then withdrew their cross-action for judgment on the bonds and coupons.

The defendants then offered in evidence the bonds and coupons, for purpose of showing form, and that they were transferred to defendants before due; and defendants offered coupons for the further purpose of showing the amount of interest now due and owing to defendants thereon.

Defendants then offered in evidence certain coupons and bonds described and set out in answer and cross-bill.

Plaintiff objects: 1. Not admissable under the pleadings; there is no issue upon which to offer them. 2. The bonds were not due at the time the cross-bill was filed. 3. The cross-bill was filed without authority of law in this: 4. It is based on chapter 23, of the
148 laws of the 15th general assembly, and that statute was not in force when the cross-bill was filed, and the cross-action is not germaine to their action. Overruled, and evidence admitted.

Plaintiffs then objected to the evidence, as follows: It does not appear for which defendants the counsel appear. Whereupon, Messrs. Porter & Moir say that they appear for John Mosher, of Canandaigua, N. Y., for the Sterling School Furnishing Company of Sterling, in Illinois.

The bonds and coupons were then read in evidence, and copies attached to cross-bill admitted to be correct.

A. W. WALES called and sworn, and said:

I have resided in said independent district for seven years past; I knew that the school-house was to cost $15,000, and was to be paid for in coupon bonds for that amount, drawing 10 per cent. interest; I heard it generally talked in the town during the time the house was being built, but cannot say how generally the people understood it.

149 *Plaintiffs' rebutting evidence.*

Plaintiffs then offered page 107 of the said district record of date April 30, 1869:

STEAMBOAT ROCK, *April* 30, 1869.

Board called to order by President R. C. Wright. Members all present.

Bill of J. C. Root for drawing wood, $1.75, was allowed. Bill of J. M. Boyd for maps, $4.50, was allowed, and ordered paid.

E. Clark and R. C. Wright were appointed a committee to prepare school-house for use of school, and instructed to present their bill for all necessary repairs.

Board appointed T. H. Robertson and Wm. Campbell a committee to negotiate for lots 7 and 8, in block 20, or 2 and 3, in block 33, for school-house site, on the terms most favorable to the independent district. On motion, adjourned.

T. H. ROBERTSON,
Secretary.

S. B. CUNNINGHAM, secretary, was then recalled by plaintiff.

Ques. Look at page 108 of school record, and state whether there is any record in the records of said independent district between the date of April 30, 1869, and July 31, 1869.

150 (Defendants objected to question: 1. Record is best evidence. 2. For the reason that all the records, books, and papers of the district are not in court. 3. The plaintiff has closed his testimony-in-chief, and this is not rebutting. 4. Immaterial, and cannot affect rights of parties holding negotiable bonds. Overruled; defendants except.)

Ans. There is no record entry on secretary's book between those

dates, nor is there any record in my office showing a meeting of the board between those dates.

Ques. In whose handwriting is the entry of July 31, 1869, on page 108?

Ans. T. H. Robertson, including the names of the officers of president and secretary pro tem.

Ques. Do you know of any record showing a meeting or order of the board of directors of said district ordering an election in said district to vote upon the question of contracting a debt or issuing bonds, and the election to be on said July 31, 1869?

Ans. I do not.

Cross-examined by defendants:

151 T. H. Robertson is now dead. I do not know where J. H. Allen lives, but think in Kansas. T. H. Robertson was secretary of the independent district July 31, 1869. He was then engaged in merchandizing in Steamboat Rock. R. C. Wright is now in Dakota.

The plaintiffs then introduced the deposition of E. CLARK, heretofore referred to, who testified:

I was vice-president of the school board of said district in 1869. I was present at the meeting of the said board in the afternoon and evening of August 25, 1869.

Ques. Can you state whether, previous to that time, there had been any order by the board to submit the question to the voters of said independent district to either contract a debt or to issue bonds to build the school-house which was ordered or contracted to be built at that meeting?

Ans. There had been no such order of the board, and there had been no such election. (See this deposition, page .)

At the request of the defendants' attorneys the plaintiffs at-
152 tach hereto a full copy of the contract, a copy of a bond and coupon, and all of S. C. Mowen's evidence, as follows, and a copy of bond and coupon:

This agreement, made and entered into this 26th day of August, A. D. 1869, between the Independent School District of Steamboat Rock, Hardin Co., Iowa, of the first past, and Foster Brothers, of Des Moines, Polk Co., Iowa, of the second part, witnesseth:

The party of the second part do hereby agree, for the consideration hereinafter mentioned, to well and substantially erect, build, and completely finish, on the land of the party of the first part, a brick school-house, on or before the first day of February, A. D. 1870, to wit: To be of the same size and shape, materials, and finish of the school-house now building at Ackley, Hardin County, Iowa, and according to the original plan and original specifications of the said Ackley school-house, with the following additions and alterations: Put in
153 two Key's No. 4 stationary furnaces; the basement story to be teen feet high in the clear, and to have the same number of windows as in the first story; foundation of stone, to show one foot above the ground line; the balance of the outside walls to be done in brick, eighteen inches thick, leaving a hallow of two inches. The said parties to further agree to furnish and put up an 800 lbs. bell, furnished with all proper furnishings. Further, to build a privy, with brick walls above ground, stone below; stone wall eighteen inches thick, ten feet deep; brick walls nine inches thick; ceiling ten feet high; build-

ing to be 12 × 24 feet; to be finished outside with four gables and cupola to correspond with school building. In consideration of the covenants and agreements being strictly kept and performed by the parties of the second part, the parties of the first part do hereby agree to pay or cause to be paid to the parties of the second part the
154 sum of fifteen thousand dollars in school bonds of the Independent School District Steamboat Rock, bearing ten per cent. interest, payable semi-annually, to be paid as follows:

Eighty-five per cent. of the value of the work done and materials furnished on the ground to be paid monthly on the first of the month succeeding the performance of such work. It is further agreed that the party of the second part shall furnish to the party of the first part an attested copy of the plans and specifications of the Ackley school-house. (Never done.)

In testimony whereof the above have set their hands the day and year first above written.

T. H. ROBERTSON,
Sec'y for Board of Ind. Dist. Steamboat Rock.
FOSTER BROTHERS,

In presence of—
WIARD W. RIEKENA.

Amendment.

Know all men by these presents that the parties to the within contract have this day amended that portion of said contract relating to payments, and it is mutually agreed that the payments on
155 said contract shall be made as follows: The parties of the second part to be paid such amounts in school bonds as they, the parties of the second part, may find sale for the said school bonds, provided that the amount called for is mutually agreeable to both parties (and Dorcus was always willing), and the amount asked for shall each and every time be referred to the school board.

Witness our hands and seals this twenty-ninth day of September, A. D. 1869.

T. H. ROBERTSON, *Sec'y Board.*
FOSTER BROTHERS.

S. C. MOWEN called and sworn for defendants.

(Plaintiffs object to the introduction or oral evidence, and insist that no oral testimony is admissible in this case. Objection overruled, and plaintiffs except.)

I reside in Eldora; am a carpenter and builder, and have been for twelve years; I have superintended public works and am a contractor. I have made an examination of the school-house erected on
156 square at Steamboat Rock, in August last.

Ques. State what, in your judgment, is the expense of that building; explain its construction, and tell how much, in your judgment, it would cost to erect it in 1869 and 1870.

(Plaintiffs object to question, as follows:

1. The evidence is incompetent and inadmissible in this case under the issue made by the pleadings. Objection overruled, and plaintiffs except.)

Ans. I examined the building outside and inside; the materials out of which it is built are good; there are 300,000 brick, worth at that time $16 per thousand; cost of brick work $4,800; 220 feet of water-

table, worth $1 per foot, $220; 256 perch of stone work, at $4 per perch of 16½ feet to perch, $1,024; 38 openings, stone sills, and hoods or caps, at $10 per opening, $380; 16 openings in basement story, sills, and caps, $4 per window, $64; 2,000 yards of plastering, at 40 cents per yard, $800; frames, sash, and glass and trimmings for 36 windows,
157 at $19 each, $11.00; dimension lumber, 1,800, feet' at $25 per thousand, $450; flooring, 9,475 feet, at $40 per thousand, $380; 56,000 shingles, at $6.50 per thousand, $350; nails and iron, 2,000 lbs., $125; 4,000 feet of finishing lumber, $65 per thousand, $260; painting, $400; carpenter and joiner work, $2,000; basement windows, frames, sash, and glass for 16 windows, at $7 per opening, $112; incidentals, $100; aggregate cash expense of school-house, $12,615, at time it was built.

Ques. What would be a fair cash price at contract for whole building?

Ans. It would have been worth the amount of my estimate. I make my estimates of costs of materials at time house was built. A good contractor that understood his business and intended to do a good job would not have taken the contract for any less than I have estimated.

I have not allowed anything for profit on this job, except perhaps
158 the joiner work might be done for a little less, but I do not think it could. This does not include privies or bell or furnace, nor seats or furniture of any kind.

The material of the building was an average, and the workmanship of building was average for this country.

No. 1.] [$500.

THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA.

The Independent School District of Steamboat Rock, Hardin County, Iowa, promises to pay to Foster Brothers, or order, at the Hardin County Bank, at Eldora, on the 1st day of May, 1874, five hundred dollars, for value received, with interest at the rate of ten per cent. per annum, said interest payable semi-annually, on the 1st day of May and November in each year thereafter, at the Hardin County Bank, at Eldora, on the presentation and surrender of the interest coupons hereto attached.

This bond is issued by the board of school directors, by author-
159 ity of an election of the voters of said school district, held on the thirty-first day of July, 1869, in conformity with the provisions of chapter 98 of act 12th, general assembly of the State of Iowa.

In testimony whereof the said Independent School District, by the board of directors thereof, have caused the same to be signed by the president and secretary this 1st day of November, 1869.

R. C. WRIGHT,
President of the Board of Directors.

T. H. ROBERTSON,
Secretary of the Board of Directors.

(Endorsed:) FOSTER BROTHERS.

Copy of coupon. [$25.00.

Treasurer of Independent School District, Steamboat Rock, Hardin County, Iowa, will pay the bearer hereof, on the first day of May, 1871,

at Hardin County Bank, at Eldora, twenty-five dollars, for interest due on school-house bond No. 1.

R. C. WRIGHT,
President.

T. H. ROBERTSON, *Secretary.*

And afterwards, on the 8th day of September, 1874, the referee
160 filed the following:

Report of referee.

To the hon. dist. court:

I herewith respectfully submit the evidence taken before me on the trial of the above cause, properly certified, together with my findings of facts and conclusions of law, and directions for decree.

FINDINGS OF FACT.

I find from the evidence that Foster Brothers made and entered into a contract with the board of directors of the Independent District of Steamboat Rock, whereby they undertook to build and erect a public school-building for said district in the village of Steamboat Rock for the sum of fifteen thousand dollars ($15,000) in the bonds of said district.

2. That Foster Brothers built and erected said public school-building for said independent district in most particulars substantially in conformity with plans and specifications mentioned in the contract.

3. That the actual cash cost of the materials and labor in the
161 school-house, as built and erected by Foster Brothers, was at the time of its erection about $12,615, as nearly as can be determined; and that the officers of said independent district issued from time to time, as the work progressed, the bonds of the district, and delivered the same to said Foster Brothers for the erection of said building; and that the aggregate of the bonds so issued is the sum of $15,000.

4. The evidence does not disclose the present owners of all of said bonds, nor does it disclose the owners of any of them, designating the particular bonds, and showing to what batch they belong in the order of issuance; but the evidence shows that all of said bonds are outstanding, and that some of the interest coupons have been paid by the district.

5. I find that the assessed valuation of the independent district was only $49,650 at the time the contract was let and the bonds issued.

162 As conclusions of law from the facts, I find:

That many of the bonds at least were issued without authority of law, and that the officers of the independent district should be perpetually enjoined from paying any of them, or any interest coupons, until an adjustment is made of the rights of all parties in conformity with the legal and equitable rights of all, or until all parties shall be brought before the court and their rights adjudged and determined.

Decree will be entered accordingly, and all taxes levied or collected for or on account of the bonds so issued, or to pay the coupons thereon, must be preserved intact until disposed of by order of competent authority in a suit when all parties are before the court.

Parties will please agree as to referee's fees.

D. D. CHASE,
Referee.

to pay said coupons and bonds was in violation of law, and illegal and void, and the collection of it should be perpetually enjoined.

Wherefore plaintiffs move the court to set aside the report of the referee, and to render a decree as prayed for in plaintiff's' bill.

E. W. EASTMAN,
Att'y for Pl'ffs.

170 *Record entries.*

STATE OF IOWA,
Hardin County, ss:

Be it remembered that at a regular term of the district court of Iowa in and for Hardin County, begun and held at the court-house in Eldora, on the 9th day of December, A. D. 1872, at which was present Aon. D. D. Chase, sole presiding judge; , dist. attorney; Nelson Gibbs, sheriff of said county, and J. M. Boyd, clerk of said court, on the 12th day of December, 1872, it being the fourth day of said regular term, the following proceedings, among others, were had, and entered of record, to wit:

A. S. MCPHERSON
vs.
FOSTER & BRO., S. P. BENSON, ET AL.

Proof of publication of original notice filed.

And afterwards, on Dec. 19, 1872, it being the tenth day of said regular term, as follows, to wit:

Demurrer to plaintiff's petition filed.

Motion to dissolve injunction filed.

Demurrer to plaintiff's petition.

171 Motion to dissolve injunction submitted to the court, the plaintiffs to have fifteen days to file written argument and to serve a copy of same on defendants' attorneys, and defendants' attorneys to have four days thereafter to file reply, and demurrer and motion to be decided as of this term.

And afterwards, on the 21st day of December, 1872, it being the 12th day of said regular term, as follows, to wit:

Pending agreement for motion to dissolve injunction, plaintiffs asked leave to file new bond, in conformity with the order of Judge Cole granting injunction.

Leave granted upon payment of $10 costs to defendants' attorneys.

Bond subsequently filed and motion to dissolve injunction overruled, and defendants excepts.

Injunction modified so as not to prohibit levy of tax for school-house purposes, not exceeding the percentum fixed by statute.

Demurrer overruled and defendants except, with leave to answer in 20 days from time of notice of decision.

172 D. D. CHASE, *Judge.*

And afterwards, on the 8th day of April, A. D. 1873, it being the first day of the April term, 1873, of said court, as follows, to wit:

Independent District of Steamboat Rock asks to be made party plaintiff.

Defendants to have ten days to answer.

Continued.

And afterwards, on Nov. 4th, 1873, it being the second day of the November term, 1873, of said court, as follows, to wit:

And now comes the plaintiff, by E. W. Eastman, his attorney, and files a motion to strike part of defendants' answer.

And afterwards, on Nov. 7th, 1873, it being the fifth day of said term, as follows, to wit:

And now comes the plaintiff, by E. W. Eastman, his attorney, and files a motion to strike plaintiffs' answer, pending which motion to strike, the defendants ask leave to verify the answer, which leave was granted by the court.

And afterward, on the same day, come the defendants, by
173 Porter & Moir, their attorneys, and file a motion for continuance.

And afterward comes plaintiff, by his attorney, E. W. Eastman, and elects to have the cause tried on written evidence.

It was ordered and directed by the court that the defendants shall, within sixty days from this time, state and show how many bonds are held and owned by them respectively.

Cause continued by order of court.

And afterwards, on April 14, 1874, it being the 2nd day of the April term, 1874, of said court, as follows, to wit:

Independent District of Steamboat Rock from the files of this case, and also the amended answer and cross-bill.

And afterwards, on April 22, 1874, it being the 8th day of said term, as follows, to wit:

And now, on this day, this cause coming on before the court, E. W. Eastman appearing as attorney for the plaintiff, and Porter & Moir for the defendants, and the parties agree in open court that this
174 cause shall be submitted to the Hon. D. D. Chase as referee, to be heard at the town of Steamboat Rock, in the month of July, 1874, and decree to be entered on report of referee as of this term.

District court, Harding County, Iowa.

A. S. McPHERSON ET AL. }
vs.
FOSTER BROTHERS ET AL. }

To the honorable dist. court:

I herewith respectfully submit the evidence taken before me on the trial of the above cause, properly certified, together with my findings of fact and conclusions of law and directions for decree:

FINDINGS OF FACT.

1st. I find from the evidence that Foster & Bro. made an' entered into a contract with the board of directors of the Independent District of Steamboat Rock whereby they undertook to build and erect a public-school building for said district, in the village of Steamboat Rock, for the sum of fifteen thousand dollars ($15,000) in the bonds of said district.

175 2nd. That Foster & Bro. built and erected said public-school building for said independent district in most particulars sub-

stantially in conformity with plans and specifications mentioned in contract.

3d. That the actual cash cost of the material and labor in the school house as built and erected by Foster & Brother was at the time of its erection about $12,615, as nearly as can be determined, and that the officers of said independent district issued from time to time, as the work progressed, the bonds of the district, and delivered the same to Foster & Bro. for the erection of said building. That the aggregate of the bonds so issued is the sum of $15,000.

4th. The evidence does not disclose the present owners of all of said bonds, nor does it disclose the owners of any of them, designating the particular bonds and showing to which batch they belong in the order of issuance, but the evidence shows that all of said bonds are
176 outstanding and that some of the interest coupons have been paid by the district.

5th. I find that the assessed valuation of the independent dist., was only $ at the time the contract was let and the bonds issued. As conclusions of law from the facts I find that many of the bonds at least were issued without authority of law; and that the officers of the independent district should be perpetually enjoined from paying any of them or any interest on coupons until an adjustment is mad' of the rights of all parties in conformity with the legal and equitable rights of all in interest; all parties shall be brought before the court and adjudged and determined. Decree will be entered accordingly, and all taxes levied or collected for or on account of the bonds so issued or to pay the coupons thereof must be preserved intact until disposed of by competent authority in a suit when all parties are before the court.

D. D. CHASE,
Referee.

Parties will please agree as to referee's fees.

177 And afterwards, on the 3d day of November, A. D. 1874, it being the 2d day of the Nov. term, 1874, of said court, as follows:

And now come the defendants, by Porter & Moir, their attorneys, and file exceptions to the report of the referee heretofore made in this cause.

And afterward, on the same day, come the plaintiffs, by E. W. Eastman, their attorney, and file a motion to set aside the said report of the referee, and also a motion to suppress the evidence taken before the referee.

The plaintiff also asks leave to supply a lost motion heretofore made in the cause to make the Independent District of Steamboat Rock party plaintiff in the cause, said motion being filed April 8th, 1873.

And afterward, on the 6th day of November, 1874, the same being the 5th day of said Nov. term, 1874, as follows:

And now come the plaintiffs, by E. W. Eastman, their attorney,
178 and file a motion to supply a lost motion.

And afterward, Nov. 12, 1874, it being the 10th day of said Nov. term, as follows:

And now on this day this cause coming on, on the motion heretofore filed to set aside the report of the referee, the plaintiffs appearing by E. W. Eastman, their attorney, and the defendants by Porter & Moir,

their attorneys, and the court after hearing the arguments and the allegations of counsel, and being fully advised in the premises, overruled the motion; to which rulings of the court each of the parties excepts.

The motion to supply the motion to make the Independent School District of Steamboat Rock party plaintiff, filed April 8th, 1873, is sustained by the court.

This is only to show the record in full and for no other purpose, inasmuch as it was afterward agreed and understood that the said Independent District should be treated as if in court.

It was ordered and adjudged by the court that decree shall be
179 rendered in pursuance of the report of the referee as of this term; to which orders and rulings of the court each of the respective parties excepts.

And afterward, Nov, 13th, 1874, it being the 11th day of said term, as follows:

Now, on this day this cause came on for hearing on the report of the referee and the motions heretofore filed during this term of court, and the plaintiffs' motion to supply the motion of the Independent District of Steamboat Rock to be sustained for plaintiffs first coming up, the motion is sustained for the express purpose of supplying lost papers and for no other purpose, it having been distinctly understood on the trial before the referee that the Independent District of Steamboat Rock was not a party plaintiff, and the defendants' exceptions to the report of the referee coming on for hearing, the same are overruled; and the defendants except.

And the plaintiffs' motion to set aside the report of the referee
180 is overruled, and the plaintiff excepts.

And the plaintiffs' motion to suppress evidence taken before the referee is overruled, and the plaintiffs except.

Whereupon it was ordered that decree be entered in accordance with the report of the referee, which hereafter follows, to which both the plaintiff and the defendants except.

Decree.

1. The court finds from the evidence that Foster Bros. made and entered into a contract with the board of directors of the Independent District of Steamboat Rock, whereby they undertook to build and erect a public-school building for said district in the village of Steamboat Rock for the sum of fifteen thousand dollars, to be paid in the bonds of said district.

2. That the said Foster Brothers built and erected said school building for said independent district in most particulars substantially
181 in conformity with the plans and specifications mentioned in the contract.

3. That the actual cost of the material and labor in the school-house, as built and erected by Foster Brothers, was at the time of the erection about $12,615, as nearly as can be determined, and that the officers of said independent district issued from time to time, as the work progressed, the bonds of the district, and delivered them to said Foster Brothers for the erection of said school-building, and that the aggregate of the bonds so issued is the sum of fifteen thousand dollars ($15,000).

4. The evidence does not disclose the present owners of all of said bonds, nor does it disclose the owners of any of them, designating the

particular bonds, and showing to which ba'ch they belong in the order of iss'ance. But the evidence shows that all of said bonds are outstanding, and that some of the interest coupons have been paid by the district.

The court finds that the assessed value of all the taxable prop-
182 erty in said district was only $49,650 at the time the contract was let and the bonds issued.

As a conclusion of law, the court finds that many of the bonds at least were issued without authority of law, and the officers of the independent district are hereby enjoined from paying any of said bonds, or any of the interest coupons of said bonds, until an adjustment is made of the rights of all parties, in conformity with the legal and equitable rights of all, or until all parties shall be brought before the court and their rights adjusted and determined.

And it is further ordered that all taxes collected or levied for or on account of the said bonds so issued as aforesaid, or to pay the coupons of said bonds, must be preserved intact until disposed of by order of competent authority, in a suit where all necessary parties are before the court, provided that this decree in no way includes the three per cent. tax illegally voted and levied by the board of said inde-
183 pendent district May 12, 1871, which is void and subject to be refunded whenever so ordered by proper officers; and it is further ordered that fifty dollars be paid to the referee, one-half of which to be paid by each party.

And it is further ordered that the plaintiffs recover their costs herein expended, and that they have execution therefor.

D. D. CHASE, *Judge.*

An' afterward, on the same day, come the defendants, by Porter & Moir, attorneys, and file a motion to cause to retax costs, and the cause was continued on the motion.

STATE OF IOWA,
Hardin County, ss:

I, Z. Gilman, clerk of the district court in and for Hardin Co., Iowa, do hereby certify that the above and foregoing is a true, correct, and complete transcript of the proceedings in the above-entitled cause as the same are now of record in my office.

Witness my hand and the seal of said court hereto affixed this 5th day of May, A. D. 1875.

Z. GILMAN,
Clk Dist. Court.

184 STATE OF IOWA, *ss:*

I, E. J. Holmes, clerk of the supreme court of Iowa, hereby cer tify that the within and foregoing record, purporting to be appellan abstract in case entitled herein, A. S. McPherson & others vs. Foste Bro's, John Mosher, & others, on pages one to thirty-five, inclusive, is full, true, & perfect transcript & copy of the abstract in said cause upo which the same was heard and determined in said supreme court o Iowa, as fully and completely as the original record in said cause re mains of record and on file in my office, & is the only record upon whic said cause was so heard. In testimony whereof witness my hand an official seal, given at Des Moines, May 20, 1881.

[SEAL.] (S'g'd)

E. J. HOLMES,
Clerk Supreme Court of Iowa.

185 And be it also remembered that to said offer the pl'ff objected because immaterial and incompetent, which objection was by the court sustained, to which ruling the def't at the time excepted.

And be it also remembered that in connection with the foregoing proofs, and to make said record admissable, the def't offered to prove also that said cause of McPherson et al. v. Foster Bro's was prosecuted by the def't herein at its expense by counsel employed by it to prosecute the same, and that at the trial of said cause all the bonds in suit herein were in the hands of said John Mosher and produced by him on the said trial, which offer was made for the purpose of making said record admissable, to which offer of the record the pl'ff still objected as immaterial and incompetent, which objections was by the court sustained and the record excluded, to which the def't excepted.

186 And thereupon def't also offered the following decree rendered in said cause:

In the supreme court of Iowa, December term, 1876.

A. S. McPherson et at., appellants, vs. Foster Brothers et al. } 6007. Appeal from Hardin dist. court.

This cause having been submitted to this court at the June term, 1875, on appeal for trial de novo, the court, at the April term, 1876, filed its opinion ordering the following decree: The court finds that the plaintiffs are resident taxpayers and owners of real estate in the Independent School District of Steamboat Rock, Hardin County, Iowa, and prosecute this suit for all the people and tax-payers of the district as well as for themselves, the question involved therein being of common and general interest to all the taxpayers of the district, who are so numerous that it is impracticable to bring them all before the court. The court further finds that personal service was

187 made on the defendants Foster Brothers, and on the members of the board of officers of said district; and John Mosher, H. Mosher, Thomas S. Beale, and the Exchange Bank of Conondagua, all residents of Conondagua, New York, were served by publication, as provided by law; and the defendants appeared by their attorneys, Porter & Moir, and answered jointly, and the said John Mosher and the Sterling School Furnishing Company of Sterling, Illinois, by said attorneys, filed a cross-action; that in the progress of the trial below said cross-action was withdrawn. The court further finds that on or about the 26th day of August, A. D. 1869, the defendants Foster Brothers entered into a contract with R. C. Wright, president of said district; E. Clark, vice-president; T. H. Robertson, sec't'y; W. Campbell, treasurer; and E. C. Rathb'n, director, and all constituting the board of officers of said independent district, by which the said Foster Brothers agreed to build and furnish a school-house and privy of brick on the land of and for said Independent school

188 district for the sum of fifteen thousand dollars in the bonds of said Independent School District of Steamboat Rock, bearing ten per cent. interest, payable semi-annually; and afterwards, on the first day of November, 1869, said bonds were issued, with interest coupons attached, and they were all delivered to said Foster Brothers on said contract. The court further finds that by the last assessment of property in said independent district for State and county purposes before the making said contract, and before the issuing of said bonds,

the whole amount of taxable property in said independent district was $49,861.00; that by the constitution and laws of Iowa said independent school district was prohibited from becoming indebted in any manner for any purpose to an amount in the aggregate exceeding five per centum on the value of the taxable property within said district, to be ascertained by the last State and county tax-list previous to the
189 incurring of such indebtedness. The court finds that five per cent. of said $49,861.00 is only $2,057.50, which is the largest amount of debt which said district could contract in the name of said independent district at the time of making said contract, or at the time of issuing said bonds. The court further finds that there was thirty bonds issued, each for five hundred dollars, all at ten per cent. interest, payable semi-annually, all dated November 1st, 1869, and numbered from one to thirty, both inclusive, and payable at different times after date, but the dates of payment does not fully appear. Each bond has semi-annual coupons attached, each coupon being for twenty-five dollars, and starting from said date of bonds. The court further finds that the defendant John Mosher is now the holder and owner of said thirty bonds, except Nos. 26, 27, 28, and 29, which last four named bonds, Nos. 26, 27, 28, and 29, are held and owned by the Ster-
190 ling School Furniture Company of Sterling, Illinois.

The court further finds that at the time of making said contract and issuing said bonds thereon, the Independent School District of Steamboat Rock had no legal power to create a greater Indebtedness than the said sum of $2,493.50, but it was by the law and constitution of the State of Iowa prohibited from so doing, and every person dealing with said district or the officers of said district, or purchasing said bonds, were bound to take notice of the laws and constitution of Iowa, and was required for that reason to look into the powers of said independent district, and examine the acts of the officers by whom the bonds were issued, to ascertain whether the law authorized the bonds and conferred the authority upon the said district and its officers to issue them.

The court further finds that the said thirty bonds with the coupons thereto attached were issued for the entire amount of said
191 $15,000.00 contracted to be paid, all bearing date Nov. 1st, 1869, and all issued at the same time, so that there is no priority in the bonds; so that each bond contains one-thirtieth part of the said $2,493.05, being eighty-three dollars and ten cents, which is valid, and each bond also contains one-thirtieth part $12,505.95; the invalid part of said $15,000.00, which is invalid; the amount so included in each bond being four hundred and sixteen. 9 dollars which is invalid in each of said bonds and not binding on said district.

It is further ordered and decreed that the sum of four hundred and sixteen. 9 dollars of each and every one of said thirty bonds of five hundred dollars each, dated Nov. 1st, 1869, and payable of Foster Brothers, or order, is null and void, for the reason that the said independent school district of Steamboat Rock had no legal or constitutional power to create the debt represented by that portion of said bands.
192 but was prohibited from so doing, and for the same reason a like portion of the coupons attached to each of said bonds is hereby decreed to be null and void, and the treasurer of said independent school district, and each and every officer thereof, and the board of officers thereof, and the said Independent District of Steamboat Rock are each and all hereby perpetually enjoined forever paying any of that part of either of the said bonds or of the said coupons hereby decreed

to be void to any person whomsoever, and from levying any tax or making any appropriation, either directly or indirectly, to pay any part of the said sum or interest thereon hereby decreed to be void.

And it is further ordered and decreed that the sum of eighty-three dollars and ten cents ($83.10) of each and every one of said bonds was legal and valid when executed, and was subject to ten per cent. interest per annum from the date of said bonds, payable semi-annu-
193 ally, and that proportion of each of said coupons is decreed to be valid. This sum will be subject to be credited with any and all payments that have been made on either of said bonds or coupons thereon since the issuing of said bonds. And it is further ordered and decreed that the plaintiffs herein have and recover their costs herein expended in the name of and for the use and benefit of said Independent School District of Steamboat Rock, taxed at $160.70, and one-thirtieth part thereof is hereby applied on each and every one of said bonds, at the date and day the opinion of this court was filed in the case of the April term, A. D. 1876.

I, E. J. Holmes, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the opinion of said court in the case of A. S. McPherson et al., appellants, Foster Brothers et al., as full, true, and complete as
194 the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 14th day of October, A. D. 1873.

[SEAL] E. J. HOLMES, *Clerk.*

To which same objection was made, which was sustained by the court, and the def't excepted.

And thereupon the court submitted to the jury certain special findings of fact, and upon the answers thereto directed the jury to return a general verdict for pl'ff, to which direction the def't at the time excepted.

And because the foregoing evidence and offers of proof, with rulings & exceptions, do not appear of record, the def't presents this its bill *bill* of exceptions, and asks that the same may be signed and made of record, which is accordingly done this 21st day of May, 1881.

195 (Signed) J. M. LOVE, *Judge.*

(Endorsed:) Stone vs. Ind. Dist. Steamboat Rock. Bill of exceptions. Filed May 28, 1881. E. R. Mason, clerk.

196 And on the 2nd day of September, 1881, a petition for a writ of error was filed in said cause, which said petition is in the words and figures following, to wit:

197 In the circuit court of the United States for the district of Iowa.

JOEL STONE, DEF'T IN ERROR,
v.
THE INDEPENDENT SCHOOL DISTRICT OF Steamboat Rock, Hardin County, Iowa, pl'ff in error.

The said pl'ff in error now comes and, by its attorneys, says that in the record & proceedings in said case lately tried before this honorable

court, then in error to is prejudice, and thereupon prays for a writ of error & citation in due form, to the end that said cause may be removed to & received by the hon. the Supreme Court of the United States.

(Signed) E. W. EASTMAN, AND
WRIGHT & WRIGHT,
For Pl'ff in Error.

(Endorsed:) Filed Sep. 2, 1881. E. R. Mason, clerk.

198–201 And on the 2nd day of September, 1881, a writ of error bond was filed in said cause, which said bond is in the words and figures following, to wit:

(Copy of bond to clerk Supreme Court U. S. removed by counsel before filing of record.)

202 And on the 2nd day of September, 1881, a writ of error was filed in said cause, which said writ is in the words and figures following, to wit:

203 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court before you, between Joel Stone, plaintiff, and the Independent School District of Steamboat, Rock Hardin County, Iowa, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that

204 you have the same at Washington on the second Monday of October next in the said Supreme Court, to be then and there held, that the record and proceeding aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 29th day of August, A. D. 1881.

[SEAL.] (Signed) E. R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

Allowed.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) Filed Sep. 2, 1881. E. R. Mason, clerk.

205 And on the 2nd day of September, 1881, a citation was filed in said cause, the original of which is herewith returned in the words and figures following, to wit:

206 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Joel Storne:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court, for the district of Iowa, wherein the Independent School District of Steamboat Rock, Hardin County, Iowa, is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable James M. Love, judge of said circuit court for Iowa, this 29th day of August, 1881.

JAMES M. LOVE, *Judge.*

207 United States circuit court, central division, district of Iowa.

I, E. R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleading, proceedings, and record entries in a certain cause in said court, wherein Joel Stone is plaintiff and the Independent School District of Steamboat Rock, Hardin County, Iowa, is defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office. I further certify that the original citation, with the return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Des Moines, in said district, this the 30th day of September, 1881, and of the Independence of the United States the 106th year.

[SEAL.] E. R. MASON,
Clerk U. S. Circuit Court, Cent. Div., Dist. of Iowa.

(Indorsement on cover:) No. 1122. The Independent School District of Steamboat Rock, Hardin County, Iowa, plaintiffs in error, vs. Joel Stone. Iowa C. C. U. S. Filed 27th October, 1881.

FILED
JUL 22 1882

16-183

IN THE

Supreme Court of the United States

No. 1122.

INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA,
Plaintiff in Error,

vs.

JOEL STONE, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

BRIEF AND ARGUMENT,

For Plaintiff in Error,

—BY—

GEORGE G. WRIGHT AND E. W. EASTMAN.

P. C. KENYON, *Legal Printer, Des Moines, Iowa.*

IN THE

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INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA,
Plaintiff in Error,
vs.
JOEL STONE, *Defendant in Error.*

GEORGE G. WRIGHT AND E. W. EASTMAN,
For Plaintiff in Error.

NOURSE & KAUFFMAN, *for Defendant in Error.*

ASSIGNMENT OF ERRORS.

And now comes plaintiff in error and upon the record assigns errors as follows:

1. The court erred in excluding the record in the case of *McPherson, et al., vs. Foster Brothers, et al.*, as shown by the transcript. (Folio 101 to 185.)

2. There was error in excluding the evidence offered as to who prosecuted the McPherson case, and as to the bonds in suit being in Mosher's hands, and their production on said trial as will appear. (Folio 185.)

3. The court erred in excluding the decree of the Supreme Court of Iowa, offered in evidence by plaintiff in error, as shown by folio 186 to 194.

4. The court erred in directing a general verdict for plaintiff upon the special findings. (Folio 194.)

5. Upon the special findings the verdict and judgment should have been for plaintiff in error, and the court below erred in ordering judgment for defendant in error.

6. The bonds in suit were void under the facts shown and the constitution and laws of Iowa, and the court below should have so found.

7. The cause of action of the defendant in error was barred by the proceedings and judgment in the case of *McPherson vs. Foster Bros., et al.*, and the court below should have so found.

8. Upon the entire record the judgment should have been for plaintiff in error, and the court below erred in finding otherwise.

Wherefore, a reversal is asked.

GEO. G. WRIGHT AND
E. W. EASTMAN,
For Plaintiffs in Error.

STATEMENT.

PLEADINGS.

Plaintiff declares upon eighteen bonds for $500 each, eight of them, as is averred, made by defendant to Foster Bros. or order, dated November 1, 1869, maturing in May, 1874, 5, 6, and ten of them payable to bearer, dated July 1, 1870, and maturing in ten years, or July 1, 1881, all bearing a printed date of November, 1869, a part of which was changed to May 1, 1870, and all delivered to Foster Brothers. Those first named were endorsed *in blank* by Foster Brothers, and, together with the others, passed, as plaintiff claims, to him for value and as a good-faith purchaser. (Folio 5 to 19.)

The answer denies the execution or delivery of these bonds, the power of the defendant school district to make such bonds, or that any of the steps required by law were taken to authorize such issue; that any election was ever holden giving power to issue the same; or that the acts of those making said bonds are those of defendant, etc. (Folio 33 to 35.)

By the answer it is further set up, that by the constitution of the state of Iowa in force at the date of said bonds, and the contract out of which they grew, it is provided that no municipal corporation shall be allowed to become indebted to an amount in the aggregate exceeding five percentum of the assessed value of the property within such corporation, etc.; that by the act of the legislature referred to in said bonds (Ch. 98, 12th G. A.), and under which it is claimed they were issued, it is also provided that no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property therein; that the only mode provided for obtaining power to issue such bonds is by a vote of the electors of such district; that such election was never held and no order was ever made for one to be holden for the issuance of these bonds; that at the time

of making said bonds and the contract out of which they grew, the assessed value of the property in said district was $49,861 00; that five per centum thereon would be $2,493.05; that it was without money in its treasury and in debt $425.00; that the school officers, without being authorized thereto issued bonds to the amount of $15,000.00, of which those in suit are a part, and that, hence, said bonds are illegal, fraudulent, null and void, etc. (Folio, 36 to 41.)

A further defense is, that in August, 1872, a bill in equity was filed by certain tax payers of the district making the said Foster Bros. *et al.*, defendants, and that such proceedings were had therein, that it was finally decreed, on appeal, in the Supreme Court of the state of Iowa, that all and each of said bonds in excess of the five per centum of the assessed value of the property, &c., to-wit, $416.96, on each of them were void, the bonds involved in this suit being all those issued by said district, thirty in all, including those herein in suit; and that by said decree all the officers of said defendant district, were perpetually enjoined from paying said bonds, &c., or from levying any taxes therefor. (Folio 42–48.)

The answer further sets up certain payments which should be credited on said bonds.

EVIDENCE.

An election was held to bond the district, April 7, 1869, three votes being for bonds, and forty-two against them, and "there is no record that any order was ever made for any other vote to issue bonds." (Fol. 86.) But without any entry in the records of the district from April 30, to July 31, 1869, it does appear that on the last date the following entry is made:

"The board met according to legal notice, and proceeded to vote on the proposition to bond said district for the purpose of building a school-house, the result being twenty-six votes for, and none against bonding." (86.)

A contract was entered into with Foster Brothers, August 6, 1869 for building the school-house, the consideration being $15,000.00 in bonds, with ten per cent. payable semi-annually. (81 & 90.) At the time these bonds were issued and this contract made, there was no money in the treasury of defendant, its debt was $425.00 and the assessed value of the property therein was $47,986. (95 & 6.) It further appears that in 1875 a suit was commenced in plaintiff's name in the Hardin district court setting up that he was the owner of seven of these bonds, and John Mosher the owner of seven others; that the attorneys, as they state, filed a cross-petition therein by reason of consultations and directions of said Mosher, without authority from plaintiff, which petition was thereafter withdrawn (97). Plaintiff testified that he bought in 1869 and 1870, and received into his possession all of said bonds except four; in 1874 he let said Mosher have them, as he stated to plaintiff, to aid him in collecting coupons belonging to other bonds of the same issue about which he (Mosher) was having trouble, and that he (Mosher) had custody of said bonds for about four years, &c. (98.)

He further testified that he never brought nor authorized any person to bring or defend any suit on said bonds, and had

no knowledge of any suit, and that the first knowledge he had of said suit was after the commencement of this action (98).

It is further testified that two of the other four bonds were sold by Mosher in April, 1870 to Leach, by the latter's administrator in 1878, to plaintiff; and that two others of the four bonds were purchased by one Chappel, in November, 1869, and by him sold to plaintiff in 1878.

We offered to show that a suit was commenced in 1872 in Hardin county district court by McPherson and others, as tax payers, to restrain the collection of these bonds making the school officers, as also John and H. Mosher, Exchange Bank of Canandaigua, New York, and others, defendants. That all these defendants appeared by their attorneys; demurred to the petition and this was overruled; they afterwards answered, taking issue upon every matter alleged touching the validity of those bonds, and in conclusion prayed for affirmative relief (117). They afterwards, in April, 1874, filed their amended answer and cross-bill, said they appeared for John Mosher and the Sterling School Furnishing Company, Illinois (121).

The record also shows that in December, 1871, the school board resolved to ask the legislature of the state to legalize the issue of outstanding bonds (136). On the hearing of said cause it further appears that defendants offered in evidence the bonds and coupons set out in answer and cross-bill (147–8), and that there was no order of the board for an election to issue bonds, and that no such election was held (150–1).

It also appears that the case was referred (174), and on the coming in of the referee's report, the attorneys for the bondholders moved for an order for judgment to an amount not exceeding five per cent. of the taxable property with interest, etc., (163). All motions were overruled and the report of the referee confirmed (179).

In the Supreme Court of the state of Iowa it was found that John Mosher and the School Furnishing company of Sterling, Illinois (both of whom were in court), were the owners of all the thirty bonds; that the district had no legal

power at the time of issuing said bonds and making said contract to create a greater indebtedness in the aggregate than $2,493.50, of which all persons dealing with said district were bound to take notice, &c.; that $416.90 of each of said bonds was null and void for want of power, &c., and that the bondholders were entitled to receive $83.10, on each of said bonds, or in the aggregate, $2,493.00 with interest. (190-3.)

The court below excluded all the evidence as to such former adjudication; as also the said decree of the Supreme Court of the state (185 and 194.) We also offered to prove that the McPherson case, aforesaid, was in fact prosecuted by this defendant, and that on the trial of said case all the bonds now in suit were in the hands of said John Mosher, and then and there produced by him, and the offered testimony was refused (185.)

SPECIAL VERDICT AND JUDGMENT.

The jury found specially as follows:

1. That defendant issued the bonds in suit, being part of an issue of $15,000.00, that it did not then have any money in its treasury, and was in debt $425.00.

2. That at that time the assessed value of the property in the district was $47,986.00.

3. That certain of the bonds, fourteen in all, were purchased by plaintiff for value before maturity in good faith and without actual notice of any facts impairing their validity.

4. Two of the bonds (3 and 4) were purchased by Chappel in like good faith, and were sold and assigned to plaintiff in September, 1878.

5. That the remaining bonds (11 and 14) were purchased by Leach in like good faith and were sold and assigned to plaintiff in September aforesaid.

6. That the whole amount of bonds and coupons matured at the commencement of this suit was $13,611.83.

Upon these special findings the jury under the direction of the court rendered a general verdict for plaintiff in the last named sum, and judgment passed accordingly (79-81), to which and all of said rulings we excepted. (194.)

WRIGHT AND EASTMAN,
For Plaintiff in Error.

BRIEF.

I.

The judgment and proceedings in the case of *McPherson and others vs. Foster Brothers and others*, in the state courts, were conclusive, and bound defendant in error.

By such proceedings he is estopped from recovering upon these bonds.

2 Parsons, N. & B., 436.
Hein vs. Nichols, 1 Salk., 289.
Merchant's Bank vs. State Bank, 10 Wall., 604.
Mayor vs. Faulkrod, 3 Wash., C. C. R., 503.
Stone vs. Elliott, 11 Ohio St., 259.

II.

The evidence offered by us of the former adjudication should have been received.

The question of fact whether defendant in error was a party to the former proceedings or judgment, or knew of, or was bound by it should have been submitted to the jury.

III.

Under the testimony, if all offered had been received, the jury must have found for plaintiff in error.

IV.

The bonds in suit were *invalid*, and defendant in error could not and did not take them as an innocent and *bona fide* purchaser. They never had any legal existence.

Constitution of Iowa, Art. 11, Sec. 3.
Laws of Iowa, 1868, Chapter 98.
French vs. City of Burlington, 42 Iowa, 617.
Winspear vs. District Township 37, Ib., 542.
National Bank vs. Independent District, 39 Ib., 495.

Riechard vs. Warren Co., 31 Ib., 481.
Manning vs. District Township, 28 Ib., 336.
Mosher vs. Ind. District, 44 Ib., 124.
McPherson vs. Foster Bros., 43 Ib., 48.
State vs. Conlee, 35 Ib , 237.
Smith vs. Fon Dulac, 8 Fed. R., 289.
Aspenwall vs. Commissioners, 22 How., 381.
Buchanan vs. Litchfield, 102 U. S., 278.
Burrows on Public Securities, 490-91.
Jarrott vs. Moberly, 103 U. S., 586.
Dodge vs. Platte Co., 82 N. Y. 218.
1 Dillon Mun. Corp., 522.

V.

The powers of the school district were limited. It has not the powers of a general municipal corporation—no power to issue negotiable bonds. It was the duty of one purchasing these bonds to inquire into the power—to know whether an election was held—whether one was ordered, or whether there was power under the constitution and laws of the state to issue the bonds in suit.

Eaton vs. Supervisors, 44 Wis., 493.
Harris vs. School Dist., 8 Foster, 58.
Cooley's Const. Lim., 195-6 & 215.
Mayor vs. Ray, 19 Wall., 475.
McPherson vs. Foster Bros., 43 Iowa, 60.
Thomas vs. City of Richmond, 12 Wall., 353.
Story's Agency, Sec. 17, 126 & 319.
Southern Law Review, Jan., 1872, 4 & 5.
Veazie vs. Williams, 8 How., 155.
Mechanic's Bank vs. N. Y. & N. H. Co., 3 Kern, 631.
McClure vs. Oxford, 4 Otto, 432.
Gould vs. Town of Sterling, 23 N. Y., 462.
Strain vs. Town of Genoa, 23 Ib., 250.
Silliman vs. Cummings, 13 Ohio, 116.

South Ottawa vs. Perkins, 4 Otto, 266.
Clark vs. Des Moines, 19 Iowa, 209.
Taylor vs. Dist. Township, 25 Ib., 450.
Marsh vs. Fulton Co., 10 Wall., 683.
Thatcher vs. Powell, 6 Wheat., 125.
Mayor vs. Shortridge, 8 Ga., 23.
Hawkins vs. U. S., 6 Otto., 691.
Dillon Mun. Corp., 381-419.

VI.

It was the duty of the purchaser of these bonds to know the extent of the powers of the school district officers, and if they exceeded the same the district was not bound by their acts to any one.

(Authorities last above.)

VII.

The recitals in the bonds did not estop plaintiff in error from showing that they were issued without authority.

They refer alone to an election held, etc., and not to the issuing of the bonds in conformity to the law, etc.

VIII.

If the recitals can be construed as referring to anything else than the fact of an election held, etc., then they are false, bind no one, nor do they confer any right.

WRIGHT AND EASTMAN,
For Plaintiff in Error.

ARGUMENT.

In this case there are two principal questions:

First. Had the validity of the bonds in suit been so adjudicated by the proceedings in the Iowa courts as to bind plaintiff and bar this recovery.

Second. If plaintiff's remedy is still open, are these bonds valid?

And here, *first*, of the

FORMER ADJUDICATION.

Part of these bonds were payable to Foster Brothers or order, and endorsed in blank, and the others to bearer. (16 and 18.) They were all issued on one contract, and all originally dated Nov. 1, 1869, but delivered at different times to Foster Brothers, and sold to Mosher, who afterwards held and produced them on the trial of the suit to which he was a party. In 1874 plaintiff let Mosher, have fourteen of them, who had their custody for four years, and during all this time, plaintiff did not have their possession (98). It was during this time that the litigation referred to in the statement, took place in the Iowa courts, leading to the decree in the Supreme Court, December, 1876. The suit in the name of plaintiff, which was afterwards withdrawn, was commenced in 1875. The McPherson suit, which went to final decree, as we have seen, in the Supreme Court was commenced in August, 1872. To this ~~this~~ the defendants (including John and H. Mosher, Beals, the Exchange Bank of Canandaigua, and others) answered in May, 1873. In April, 1874, defendants, as owners of the bonds, filed their amended answer and cross-bill, setting up that John Mosher then held and owned all of the thirty bonds except four, which were owned by the "School Furniture Company" of Sterling, Illinois (120); and prayed a decree that the proper district officers pay over to them, all money in their hands, establishing the full amount

due and for a lien, &c. The attorneys filing this cross-bill said, and it was so entered of record, that they appeared for the parties just named *as the owners and holders of these bonds* (121). The case was heard before the referee, the parties thereto being represented by counsel. He reported in September, 1874 (160), and the decree in the district court was entered in November of that year. All these proceedings, including the filing of the cross-bill, trial and decree, it will be seen, transpired while Mosher had the bonds in his hands even according to the testimony of plaintiff (98), and indisputably so according to the testimony offered by us, and refused (185). Aside from these facts, as bearing upon this question, the only other material one is that plaintiff testified that he did not authorize either the prosecution or defense of any suit involving these bonds; that Porter and Moir who appeared were not his attorneys, and Porter (one of said firm), said he acted at the instance of Mosher in filing the petition of 1875; did not know plaintiff; had no correspondence with him, and had no authority from him to *bring the suit*. Neither he nor any one else, however, aside from plaintiff, pretend to say that these attorneys did not have authority to *defend* the McPherson suit.

Then you have this case, or would have if our testimony as to the custody of these bonds had been admitted; bonds, some payable to bearer and others to Foster Brothers or order, endorsed in blank, in Mosher's possession, placed there by plaintiff, suffered so to remain for four years, and during that time a litigation involving their validity, to which Mosher was a party, and to which he appeared, where the bonds were produced on the trial, where there was a full hearing and a decree finding the bonds invalid. Do these facts estop plaintiff to now recover in this action? Or, what would be equally fatal on this appeal, should not the question of the ownership of these bonds at the time of said former adjudication have been left to the jury? For if Mosher was such owner, in fact, or though not the owner, if he had a right to represent, and in

law bind plaintiff in such proceeding, then the judgement therein estops plaintiff, and the court below must have so found. We maintain that under the facts the decree estopped plaintiff, or if this is not so, that it must be true that the question of ownership or what were the real facts in the case, should have been left to the jury.

Mosher, having these bonds in his possession, endorsed as they were, in blank or payable to bearer, no one will doubt that he could have sued upon them in his own name. For to this court we need hardly suggest that the rule is that where a bill is payable to bearer, or to order and endorsed in blank, it passes by delivery and bare possession being *prima facie* evidence of title entitles the holder to sue in his own name. And being entrusted with them by plaintiff, if he had sued, recovered judgement and collected the money it is abundantly clear that plaintiff's remedy, if Mosher failed to account for the proceeds, would have been against Mosher whom he thus trusted and not defendant. (*Mayer vs. Faulkrod*, 3 Wash. C. C. R., 503.) If Mosher held the bonds as agent of Stone, the *face of the bond* was the representation to the world that he owned them. No one is bound by any secret relation or instruction between Stone and Mosher. Or, if defendant, without suit, had paid Mosher and taken up the bonds, Mosher, and not the defendant, would, after that, have been the responsible party to plaintiff. For the rule is that the holder of such paper is entitled to receive its contents (2 Parsons, N. & B., 436). And so if Mosher had brought suit, and on final hearing the judgement had been for defendant, as in this instance, then we maintain that in principle plaintiff is alike concluded. Or, if in a proceeding by defendants to have said bonds declared invalid, Mosher appeared, representing himself as the owner of the bonds, having them in his possession and asked affirmative relief, as by praying, as he did, for judgement for the amount of the bonds, not only by cross-bill, but by

answer (117), then a decree against him bound plaintiff precisely as though Mosher had brought an original action for their recovery.

We submit that it makes no difference that plaintiff may have entrusted him with the bonds for a special purpose. He entrusted him with negotiable paper the possession of which was *prima facie* evidence of ownership, which upon its face bore no evidence of plaintiff's right to it but the title to which was apparently duly, legally and properly in the holder, Mosher. We were not parties to this arrangement. We had knowledge that the bonds were sold to Mosher, but no knowledge of his sale to Stone. And possession was to us and all the world, having no notice or knowledge of the facts, conclusive evidence of title. It is a proposition, about which there is, of course, no controversy, that, unlike all other property, negotiable paper carries its whole evidence of title upon its face.

Stone vs. Elliott, 11 Ohio St., 259.

Upon this record there is no doubt as to the identity of the subject matter or cause of action. The bonds in suit are in part those involved in the McPherson case. In other words, it will be conceded that if this plaintiff, Stone, had appeared to the former action, filed his answer and cross-bill, as Mosher and the other parties did, and the decree had been as found in this record, he (Stone) would have been concluded, and could not again be heard to insist upon the validity of his bonds. The only question, therefore, is whether, since Stone intrusted those bonds to Mosher, who, as the holder, would have had the right to sue upon them in his own name, and who did thus sue upon them, he (Stone) is estopped from denying the consequences resulting from the action or steps taken to recover upon such bonds by Mosher, the holder, and at least apparent owner.

This is not a case where there was a mistake by an attorney, who was ignorant of the ownership, as in *Lawrence vs. Ware*, 37 Ala., 553, and where there was a mere temporary

agency to demand payment and in default to deliver to an attorney for collection. But one where the holder himself, having the bonds in his possession, advised and aided in the prosecution of the suit. (For it was in effect a prosecution, since the defendants' attorneys asked by their answer, as well as cross-bill, affirmative relief.) Nor is it like the case just cited, where the defendant in the original action successfully defended on a plea of set off against the agent in whose name the action was brought. For here the suit, as we shall treat it, being in the name of the holder, one who indisputably held the legal title to this paper, was defeated upon its merits, the defense going to the very essence of his right, or that of any other person to recover thereon. If then plaintiff let Mosher take the bonds to aid him in collecting coupons on other bonds of the same issue, about which the latter was having trouble, and since Stone does not say that Mosher had secret instructions to *not* sue, nor to not defend a suit--(Mosher is dead.)--and if Mosher, thus having their custody for four years, during that time, whether to assist in collecting coupons held by him, or for any other purpose, commenced an action on his own bonds, and those thus borrowed, in his own name, the question is whether the judgment in that action concludes plaintiff. We are assuming now that plaintiff was entirely ignorant of that action, or that he never otherwise than by him stated (folio 98) authorized that proceeding, of which we shall speak more particularly under the next head.

Plaintiff then let Mosher have these bonds *to aid him* in collecting coupons belonging to other bonds of the same issue, about which Mosher was having trouble; (probably that he might have enough coupons to give federal jurisdiction, but whatever the reason, is not material). Did not plaintiff thereupon confer upon Mosher the right and power, if necessary, to prosecute these bonds in his own name, or at least leave it to his discretion, how or in what manner he should use them in thus aiding himself for the

purpose named? It matters not whether Mosher paid any thing to plaintiff, nor what the consideration was for this delivery. As matter of law what we submit is, that if Mosher having, as the holder, the legal title to these bonds, determined that the best way to aid himself in the collection of his coupons was to sue upon these bonds and coupons, as well as those held by himself in his own name, then he had the right and power to do so, and his action bound plaintiff, and the judgment in that proceeding was equally conclusive. If Mosher had settled with the district, and received, say fifty or seventy-five per cent. in the compromise of this disputed and doubtful claim, and in payment of all these contested bonds, he, deeming that he was thus best aided in the collection of his own claim, then we submit that if there was loss, plaintiff and not the district must have borne it. In other words, Mosher would have had the power under the authority conferred, defendant being ignorant of the extent of his power, to make such adjustment. And so, if he deemed that he was thus aided by bringing suit upon all the bonds, then the judgment thereon alike concluded plaintiff. There were no conditions or limitations imposed or placed upon Mosher as to the manner of their use at the time plaintiff let him have the bonds. If, therefore, we suggest again, Mosher had arranged for the extention of time on all the bonds so in his possession, or for their change into other bonds, fixing a shorter date of payment, or for judgment on them with a stay of execution, or any other similar arrangement which in his judgment contributed to aid him in the collection of his coupons, no one will probably claim that plaintiff would not be bound. And if, instead of doing this, he sued on all of them, believing that thus he could best secure or aid his own interest as to the paper undisputably his own, we submit that he had the power to do so and plaintiff would be concluded by his act. That a suit might be necessary to thus aid Mosher was as much and necessarily in the minds of the parties as any other method of aiding him to accomplish

the end proposed. This was indeed reasonably the purpose of the claimed loan. For it is impossible to see why he should need the aid of plaintiff's bonds, if not for the purpose of bringing suit. And this the parties must have intended, and doubtless did, anticipate. And accordingly we find that Mosher defended, and plead that he owned the bonds. He put them in evidence. That we submit, put the bonds under the jurisdiction of the court and made them a part of the recrod. The decree was upon the bonds thus in court.

Remember that this is not a case where the person interested in the paper was prohibited from suing, nor were his powers at all special or limited. He took and held them four years without objection, or the suggestion thereof, on the part of plaintiff for purposes of his own. He was to be the judge of how or in what manner he could best use them to accomplish the one thing agreed upon, to-wit: To aid him in collecting his own coupons. The agency of Mosher was hence coupled with a power—how to be exercised he was to determine—and when exercised plaintiff was bound by his action, and especially so if that done was not in conflict with the purpose for which the power was conferred. And though so in conflict, if defendant was ignorant of such terms and acted in good faith.

Plaintiff, by delivering these bonds, endorsed and payable as they were, conferred upon the holder the same power and the same right, to conclude him, whether by action, settlement or otherwise, as if being payable to plaintiff or *order*, he had transferred them to Mosher by name. As to defendant and all persons acting without knowledge of any special circumstances, the holder in the one case would have the same rights and powers as the endorsee in the other. For, whatever purpose the endorsement or delivery was made, no one can doubt that the legal right was vested in the holder with all the powers, rights and consequences therefrom resulting. The ownership in both cases would be alike, apparently at least, absolute and

complete. And where the owner, by either method, invests the holder with the ownership, if harm comes to such owner by the act of the holder, the owner, and not a third innocent party, must suffer, if either. In principle, the owner put it into the power of the holder to perpetrate the wrong, contributed to produce the loss, and if both owner and defendant are innocent, the former and not the latter must bear the consequences. *Hein vs. Nickols*, 1 Salk., 289. *Merchant's Bank vs. State Bank*, 10 Wall., 604. And now, if these bonds had all been payable to order, and plaintiff had endorsed them to Mosher by name, and let him have them just as in this record disclosed, no one can doubt, as it seems to us, that the endorsee could have sued in his own name, and that the result of such action would have bound plaintiff. And especially so where this judgement was not upon any question of ownership, right to sue, or on any ground not going to the merits of the claim, and where the validity of the paper in the hands of all persons, whether payee or any subsequent endorsee, was involved and plainly and squarely determined. Mosher therefore, we submit, had the same right to sue, and the judgement in such suit was as conclusive upon plaintiff as if he had held the paper by a full and formal endorsement to him by name. These bonds bear no evidence upon their face that plaintiff had or ever had had any interest in them. Those payable to order were endorsed in blank by the payees and the others passed from the original holder directly to Mosher. There was no objection in the prior suit that the blank endorsement had not been filled up. Indeed, Mosher was treated by defendant as the owner, he so claimed, and neither of them could afterward be heard to say that the action failed because this formal thing was not done.

We have thus, your Honors, endeavored to present the first point from the standpoint of principle. The question arises upon facts peculiar in their character, and we doubt whether a case can be found bearing much, if any, analogy. It must be decided, therefore, upon its own facts. We can not believe

that any case can be found which, in principle, antagonizes the position taken by us. If it can our friends will be diligent in presenting it, and we shall take pleasure in noticing it in reply. We then inquire—SECOND

Whether, upon the record and the evidence offered, this question should have been left, as one of fact, to the jury?

It will be observed that all our evidence on this subject was rejected. And yet, if it was such that the jury might have found that Mosher was acting for Stone, or that Stone had notice of the proceedings in the McPherson case—then most clearly the estopple was complete, and the judgement should have been for defendant.

We know that plaintiff testified that he never authorized the bringing or defending any such suit for him; that he had no knowledge thereof; that Porter & Moier were not his attorneys; that the first knowledge of such suit was *after* the present action was commenced, and that nothing was offered to contradict this, unless found in the other evidence admitted and offered, as shown by the bill of exceptions (99-100).

It appears that in 1875, a petition was filed in the Hardin county district court of Iowa, in the name of plaintiff, stating that he was owner of seven of these bonds and John Mosher the owner of seven others, the remainder belonging to other parties in said petition named. Porter says he did not know palintiff; had no correspondence with him; filed the petition by reason of consultations with, and directions from Mosher; had no authority from Stone, and that this suit was afterwards withdrawn. But he does not state that he did not have authority from Stone to *defend* the McPherson action.

And this is substantially all of plaintiff's evidence on the subject. On the other hand it was found as a fact, by the Supreme Court of Iowa, that Mosher was the holder and owner of all these (30) bonds, except four which were owned by the Sterling School Furniture Company, Illinois (189), and we offered to show, that at the trial of that (McPherson) case

all the bonds here in suit were in the hands of Mosher and produced by him thereat (185). Porter & Moier stated on the hearing of the cause in the state court, that they appeared for Mosher and the said School Company (121), and plaintiff admits that Mosher had the bonds in suit in his custody for four years, during which time he (plaintiff) did not have possession thereof, nor of the coupons, nor did he receive any interest on the same.

Upon these facts we submit that the jury would have had a right to find that Stone was not innocent and ignorant as he claims, but that he and Mosher were "running in couples," each knowing full well what the other was doing. It is as well established that Mosher had all the bonds now in suit in his possession at the trial of the McPherson case, as it is that Stone ever bought any of them, for we offered to prove this fact and our evidence was rejected (185). Suppose that had been shown, and for the purposes of the case it is to be so taken, then the jury would have been justified in finding that Howell, Mosher, E. A. Nash and J. W. Chappel, in their testimony as found in record (folio 99.), were mistaken – had not stated the truth. For the substance of their testimony is that four of these bonds (3, 4, 11 and 14), were not out of their possession after 1869 and 1870 until sold to plaintiff in 1878. Not only so, but by the answer of defendants in the McPherson case, they set up and describe all the bonds from one to thirty, inclusive (112), and by their answer (without reference to the cross-bill) asked affirmative relief (17, 18). And these bonds and coupons they thus offered in evidence and they were admitted (147). And thus again the record discloses that these bonds were not, from 1869 and 1870, nor from 1872 even, all the time in the possession of Nash and Chappel. [The trial before the referee when these bonds were thus offered in evidence was in 1874, for it was referred in April of that year, and the referee reported in Sept., (folio 167, 174.) This testimony then, if before the jury would have further justified the conclusion that Mosher did hold these four bonds,

as well as all of them, and that they were used by him and the other defendants on that trial. Then too, plaintiff says that all the bonds and coupons now in suit, except four, were out of his possession for about four years, in the hands of Mosher, and that during all this time he received no interest on the same. (The other four bonds he bought in 1878, (99-100.) Now take these facts in connection with the record offered, which shows that the McPherson case was pending from August, 1872 to December, 1876. (It was pending in the Hardin district court from 1872 until June, 1875, when it was filed in the Supreme court on appeal (100). During all this time some person, at least, as the holder and owner of these bonds, was being represented in all these courts ; before the district court, the referee and the Supreme Court. For four years then, Stone was utterly ignorant of what Mosher was doing with his bonds, amounting to $7,000, with the interest thereon amounting to from four to five thousand dollars more. For four years he remained perfectly inactive, entirely indifferent as to what Mosher was doing with at least $12,000 of his securities entrusted to him "to aid in collecting coupons about which Mosher was having trouble." For four years he made no inquiries, manifested not the least concern as to his interest accumulating at the rate of at least $700 per annum, but in blissful ignorance permitted Mosher to keep bonds, coupons and all to aid him in his efforts to collect bonds which he did not own, according to plaintiff's theory, for he had sold the only four he ever had, or of which there is any account, in 1869 and 1870. And yet it is a part of the judicial history of this country, of which the records of this court furnish abundant evidence, that during these years the contests were many, not in or from one, but almost every western state, involving the power to issue such bonds, and the state of unrest and uneasiness of the holders of such securities was general and wide-spread. Does any one therefore believe that Joel Stone, even in his New York home, did not know what Mosher and the courts were doing all this time, touching these bonds? At least, was it not our right to

have the question of fact submitted to the jury under the evidence admitted and offered? Certain it is that if upon the record, as we proposed to make it, a jury had found that Mosher was plaintiff's agent, that plaintiff knew of the McPherson suit and was the real party in interest in all that litigation, the court would not have disturbed the verdict.

This defendant has once fully and fairly litigated, before a competent tribunal, the validity of these bonds. At one time they were undisputably, *all of them*, in the *hands of Mosher*, and again, part of them for almost *ten years continuously* in the possession of *Leach, Nash and Chappel!* In one court the attorney's represented Mosher and the School Company, as the owners of the bonds, at another time they bring suit on part of them in the name of plaintiff, part in the name of Mosher and part in the name of other persons, and now in this court say they never knew plaintiff in all these proceedings!! Mosher and others having all these bonds in their possession, fight for four years or more, making use of all the machinery of the state courts to recover upon them or have their validity declared both in the lower and appellate tribunals, and failing in this it turns out that Joel Stone was the innocent holder and owner all the time, and the defendant must again pass the ordeal of the courts! Stone never interested himself about his large securities while there was a chance that his agent, if not the real owner, might succeed in the state courts, but that terminating adversely, he all at once finds that he is not bound and concluded, comes into another tribunal, repudiates all that Mosher, all the other parties and all the other attorneys had done, and is a full-fledged innocent holder of these bonds—innocent as a purchaser, and innocent of all these prior proceedings!! We don't believe it and don't believe that any jury would so find if all the facts were presented to them under proper instructions.

The case is one of most unmixed wrong and hardship on defendant. It acted during the long and protracted litigation in the state courts in the utmost good faith; believing, and, as

we submit, having the right to believe, that the parties resisting the relief asked were those in real interest—that the adjudication would be final, and without the least intimation or knowledge of the secret arrangement now set up by plaintiff under which Mosher held the bonds. The attorneys representing the bond-holders made no suggestion or intimation that they did not represent the real owners, nor that the defendants of record in those suits were not the parties having the right and the only right to defend. And even now, Porter, one of the attorneys, and the only one sworn, does not say that he did not have authority from Stone to represent him in the *defense of the action* which went to judgment, but only that he had no authority from him to *bring the suit which was dismissed.* Nor does he say that he did not have correspondence with plaintiff, nor that he did not see him *after* 1875, when the suit which was afterwards dismissed was commenced, but only that he did not at or prior to that time. It is true that plaintiff goes much further than the attorney, but as we have shown the facts, as we claim them, and upon which it was our right to have the jury pass, are so utterly at war with what he says that any fair tribunal would have found that he was not to be credited.

Then *four* of these bonds were not owned by plaintiff until long after the former adjudication for he bought them in 1878 (99). They were, then long over due, for bonds three and four matured in 1874 and '75, and eleven and fourteen in May, 1877. (Fol. 5.) How Mosher obtained possession of *these* bonds does not appear. That he did have them at the former trial, or at least that the jury might have so found, notwithstanding the testimony of plaintiff's witnesses (99) cannot be doubted. What claim can there be therefore as to these bonds, at least that Mosher was not the real owner with full right to sue upon them and to take all steps necessary for their collection?

No, no, this effort of plaintiff to open up the former litigation—to ignore it—to set himself up as the innocent, ignorant holder of these bonds is an afterthought. Mosher litigated

for four years—just quietly returned to plaintiff the bonds entrusted to his care—said nothing about what had been done, and Stone, two years and a half afterwards commences this suit, and is for the first time after he commences it advised of the former suit. Does any man believe that? Mosher never said a word about what had taken place! Plaintiff made no inquiry! did not ask whether Mosher had or had not got over his trouble as to the bonds he held! but laid his bonds away, taking no care as to his interest coupons, and in 1879 concludes it is time for him to look after his money!! He took no care to see whether taxes had been levied, as the law requires, to pay the debt; wrote no letters, but sends his bonds out, and after suit was commenced is, to his great surprise, advised that Mosher had placed them in process of collection and been defeated!! The whole story is so utterly improbable that no twelve good and lawful men would have believed it; and to just such a tribunal should have been submitted its determination.

Validity of Bonds.

We come now to the second principal question, and that is, are those bonds valid no matter by whom held?

I.

The Constitution of Iowa, article 11, section 3, reads:

"No county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation, to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness."

The power to issue the bonds in suit is claimed under chapter 98, Laws of the 12th General Assembly of Iowa (1868), and now in the Code of that state, Sec. 1821, and is as follows:

"Independent school districts shall have the power and authority to borrow money for the purpose of erecting and completing school-houses, by issuing negotiable bonds of the independent district, to run any period

not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district."

Other sections of this act provide for submitting the question of issuing such bonds to a vote of the electors which, however, need not now be set out. The 16th general assembly of the state (76) amended this so as to provide for such bonds for the purpose of "redeeming out-standing bonds." But as this was long after those in suit were issued, and it is not pretended that they were issued for any such purpose, this amendment need not be further noticed. This provision of the Iowa constitution and the legislation following it have been several times passed upon by the Supreme Court of Iowa. We quote from some and refer to others.

In *French vs. City of Burlington*, 42 Iowa, 617., SEEVERS, chief justice, speaking for the court in construing the constitutional provision, says:

"It matters not how or for what purpose the indebtedness is incurred, it is prohibited * * * and he who contracts with a city whereby an indebtedness is created must, at his peril, take notice of the financial standing of the city, and whether the proposed indebtedness is in excess of the constitutional limitation. Any other rule leaves the tax-payer at the mercy of the officers of the city and the contractor, and would render the constitutional provision nugatory."

Winspear vs. Dist. Tp., 37 Ib., 542, holds that—

"a school district is, within the meaning of the constitution, a political or municipal corporation, and is inhibited from incurring indebtedness exceeding that there prohibited."

In *National State Bank vs. Ind. School Dist. of Marshall*, 39 Ib, 495, it is said:

"The order being issued in excess of the constitutional limit was invalid in the hands of the original holder, whose duty it was to ascertain the au-

thority of the officers with whom he dealt, to bind the district by issuing the order in question. *Reichard vs. Warren Co.*, 31 Iowa, 481, and cases cited."

And see *Manning vs. Dist. Tp.*, 28 Iowa, 336.

In *Mosher vs. Ind. School Dist. of Ackley*, 44 Ib., 124, the court say:

"The petition alleges that the aggregate amount of the bonds in question exceeds five per centum on the value of the taxable property of the Ind. School Dist. of Ackley. This being conceded, the bonds and coupons attached are void, without regard to the good faith with which they were purchased, and the want of notice of their invalidity by the holders. *National State Bank vs. District of Marshall*, 39 Ib., 490; *McPherson vs. Foster Bros.*, 43 Ib., 48.

And on 125 it is said that the constitution "prohibits an inindebtedness in the form of a bond, note or any other kind of obligation, whether it be in writing or by parol, express or implied."

[And we stop here to note that the ubiquitous John Mosher turns up in this case again, as also the inevitable Foster Bro's. It appears that they were around providing for the issue of school bonds. The latter took the contract and the bonds, stating that though the district was not authorized to issue the same, it mattered not, for they would accept such bonds as they would issue; that they were building these houses in different parts of the state and taking bonds under like circumstances (folio 133). And then at a convenient time Mosher (whose other name is John) turns up the owner of them, and he litigates a while, and getting tired turns the job over to Joel Stone. This was in 1874 and '76. Porter and Moier appear for Mosher, and it is not improbable that another Joel Stone or some one else will in due time be found to swear that the bonds in the Ackley case were never out of his possession, or if so, the convenient Mosher had them "to aid him in collecting coupons about which he was having trouble!!" And so the expensive sport continues and the people of these districts are first duped by the officers who issue bonds

without authority and then put through the tread-mill of litigation as often as a new *innocent holder* can be found backed by *attorneys* who had no knowledge of their former ownership when the suit was brought!!]

We next call attention to the McPherson case heretofore referred to and found in 43 Iowa, 48. As that case involved the validity of the very bonds now in suit, and covers more fully than any other in Iowa, this whole question, we ask for it the most careful attention. The opinion is by Judge BECK, one of the ablest and of the longest service on the bench of the state. It is concurred in by all the judges, and we submit is unusually clear and strong in its reasoning, and unanswerable in its conclusions. The constitution and statute above quoted are examined with great care, and the conclusion reached that the bonds are invalid in the hands of all persons in excess of the constitutional limit; that there was no power whatever to issue, and that there could be no such thing as an innocent holder of such paper. Your Honors will observe also (p. 57 of that case) that the same question had five years before that been before the court and a like conclusion reached, the opinion prepared, but by reason of the settlement of the case had not been announced. But for the length of this argument we should make extended quotations from this opinion. It will be found to contain an unambiguous construction by the highest court of the state of the constitution and statute, and there cannot hence remain a doubt that the Iowa courts hold bonds issued as these were, invalid, whether held by the payee or any one—that there can not be an innocent holder of them. And since that court has construed the fundamental law of the state, has defined the powers of these corporations, has given us the meaning and scope of the legislation under which it was attempted to issue these bonds, and since there is not now, nor has there ever been, any conflict in their decisions, this construction, we submit, must be that which this court will follow. The state court having authoratively determined that these bonds were issued in violation of the

constitution, and that by a distinct adjudication as *to this very paper*, and as this court is settling the rights of these parties under a state law, it would seem to necessarily result that the state court should be followed. *Smith vs. Fon Du Lac*, 8 Fed. R., 289. *Aspenwall vs. Comrs.*, 22 How., 381.

And now, before considering what this court has held, it may be well to refer to the language of the bonds in suit, that it may be seen how far, if at all, the so-called estoppel, upon which the defendant relies can aid him.

The pivotal words are substantially the same in all of them, and we quote from No. 17 (folio 18):

"This bond is issued by the board of school directors by authority of an election of the voters of said school district held on the July 31, 1869, in conformity with the provisions of chapter ninety-eight of acts 12th general assembly of the state of Iowa."

It may also be well to remember that the jury found, and it is conceded that at the time these bonds were issued the defendant district was indebted in the sum of $425 00—that the assessed valuation of the property therein, as shown by the last preceding assessment was $47,396.00, and that it hence follows that five per centum, the constitutional and statutory limit, would be, say $2,400, or deducting the $425 = $1,975. The bonds in the aggregate amounted to $15,000, or more than thirteen thousand in excess of the limit fixed. And to 32 per cent. on all the taxable property in the district.

The facts therefore bearing upon this question are very few and admit of no controversy. No question arises as to whether the provision of the state constitution operates *proprio vigore* upon the defendant corporation, since the legislature has, following the constitution, imposed the same limitation. Nor is there any pretense that the bonds upon their face contain any recital even tending to show that the district indebtedness increased by the amount of these bonds was within the constitutional limit, nor any of the circumstances which, under the constitution and statute, must have existed before the defendant could constitutionally or legally incur the

indebtedness. The bonds simply purport to be issued by authority of an election, held in conformity with the provisions of chapter 98, &c. Under such circumstances we submit that our case falls clearly within the ruling of this court in *Buchanan vs. Litchfield*, 102 U. S., 278. For a recital that the bonds were issued in conformity, &c., does not import a compliance with the constitution. And hence, as this court well said:

"The present action cannot be maintained unless we should hold that the *mere* fact that the bonds were issued without any recitals of the circumstances bringing them within the limits fixed by the constitution, was in itself conclusive proof in favor of a *bona fide* holder that the circumstances existed which authorized them to be issued. We can not so hold."

It is to be observed that under the limitations of the constitution and statute, no power or discretion is conferred upon the officers of the defendant, to decide whether any so-called condition precedent, had been complied with, such as that the required vote had been held, or that the election had been duly or legally held or the like. For certainly these officers had no discretion as to the amount of indebtedness such corporation may assume. And hence if a mere recital that a bond is issued by authority of an election held "in conformity to the provisions" of a statute (reciting it), would work an estopped, as to the constitutional limitation, this "would extend the doctrine of this and all courts as to municipal bonds further than would be consistent with reason and sound policy." Indeed, the prohibitions of the constitution would be utterly valueless. For no man, looking to the recital found in this bond, would have the least reason to suppose that it had any reference to the constitution, or that the indebtedness was in pursuance of or in accordance with it. Upon what principle is it, that such recitations are held to estop the municipality? The answer is, as this court said in *Coloma vs. Eaves*, 92 U. S., 484, because "the recital is itself a decision of the fact by the appointed tribunal." But a recitation, such as here found, is no decision of the essential and

vital fact to make the bonds valid. The recital ~~may~~ might be taken as a decision of the appointed tribunal, that the district had procured a site and was ready to erect a school-house—that the question of borrowing money therefor had been "submitted to the voters of the district at the annual or a special election;" that "notice was given of such meeting;" that "a majority of the votes cast, were in favor of such loan"—and still not touch, in the remotest degree, a decision of the capital fact that the bonds were issued in compliance with the constitution.

Mr. Burrows, in his very recent valuable work on Public Securities, refers to the McPherson case at length, and says that the doctrine there announced is sustained by the decision of this court in the case to which we have referred (490-91). And after the most careful analysis of the two cases, we do not see how this conclusion can be escaped. Whatever may have been the rule, in the opinion of some, in the Knox county case, 21st How., 544, it will probably not now be claimed that the mere execution of bonds by officers charged with the duty of ascertaining whether a condition precedent has been performed, is conclusive proof of its performance. For this leaves out of view all evidence or recitals in the bonds themselves, that the conditions precedent have been complied with, and the fact of such recitals as evidence conclusive that the matters *in pais* have been determined by the proper officers. And though the Coloma-Eaves case (92 U. S., 484) was by a majority of the court placed upon this latter ground (that is, the fact of the recitals), neither that nor any other case will be found conflicting in the least with the Buchanan case, or going so far as to hold that the recitation that a bond is issued by authority of *an election*, etc., held in conformity with the provisions of a specified act, concludes the defendant as to the constitutional inhibition. For a constitional provision should not be so construed as to defeat its evident purpose, but rather so as to give it effective operation to suppress the mischief at which it was aimed (FIELD, J., in *Jarrott vs. Mo-*

berly, 103 U. S., 586). The inhibition of the constitution is one in the interest of the people, for their protection against excessive taxation. There is nothing for the officers charged with the duty of issuing these bonds to determine, or if so in this instance, there was an entire absence of any recitals referring in any way to the constitution, the indebtedness of the district, or anything calculated to mislead, or to make any the less active the purchasers of these bonds.

These officers could safely certifiy just as they did without subjecting themselves to personal responsibility, or to the penalties of the state criminal statutes. If, however, they had said more, and recited anything to indicate that they were acting within the constitution, or statutory limitation, then the law could have laid its hand upon them, for the offense would have been a misdemeanor, under the statutes of Iowa, and punishable as such. (Code, § 3961; *State vs. Conlee*, 35 Iowa, 237.)

Neither the constitution nor the statute committed either directly or indirectly, to these officers, the power to determine or certify anything as to the limitations imposed on the indebtedness of the district. And we submit, that unless such decision is not impliedly but plainly committed to them, it ought not in principle to be held to be in the power of such officers, to bind a municipality by a mere statement which, in point of fact, would be untrue (1 Dill. Mun. Corp., § 522) And certainly the argument is easy, when we go one step further, and say that a recital as to matters which are committed to them, should not be held to conclude the defendant where the power to act by such officer is expressly withheld or denied. This view is sustainable, if upon no other ground, upon that of public policy. And we need not say that a power exercised, which plainly and palpably violates this policy, must be held insufficient to invest any one with the fruits of such exercise, which he can enforce in any court. The agents of these corporations have no power, though the exercise is not expressly denied, to do an act condemned by

what is termed this public policy. All acts, whether by an agent or any one, are void when in conflict with this.

But, we beg to call attention to the very recital found in these bonds, which it is claimed estop defendant, to-wit:

"This bond is issued * * * by authority of an election of the voters * * * held on the 31st day of July, 1869, in conformity with the provisions of chapter 98," etc. Now, what is the fair construction of that language? Is it that the *bonds* were issued in conformity, etc., or that the *election* was held in conformity? Most clearly the latter. The recital therefore, if accepted as ever so true, ever so conclusive as to the facts stated, does not refer, in the most remote degree, to the pivotal fact upon which appellee must rely if he hopes to succeed, that the bonds were issued in conformity with the statute or constitution. And hence, the case of *Bonham vs. Needles*, 103 U. S., 643, is of no value to plaintiff. For these officers might, with ever so much truthfulness, certify that the *election* was held in conformity with the statute named, and still not certify anything as to their determination (if they even had the power to do so) of the question of indebtedness. In a word, no one reading this bond could be mislead or induced for a moment to believe that the question of *power* to issue it, aside from the result of the election, had ever been passed upon or considered by either the electors or the officers. The case, your Honors will see, therefore, differs very widely from those where the recitals were held to show a determination of matters which it was the province of such officers to determine, and as a consequence, we think it must be clear that this case falls within that of Buchanan-Litchfield, and is not in principle, like any of those upon which appellee may rely.

For it will be observed that in all other cases turning upon the fact of recitals, the bonds contained statements, not only that they were issued in pursuance of a vote of the people, but also by authority of the act of the legislature, etc., (*Walnut vs. Wade*, 103 U. S., 683). Or if the recitals were not in this form, then as follows, "that they were issued by authority

of and in accordance with the statute, and in pursuance of and and in accordance with the vote of the electors," etc., (*Marcy vs. Oswego Tp.*, 92 Ib., 637). And so in all the cases it will be found that the statute under which the bonds were issued were construed, not only to constitute the board or officers acting, agents to execute the power granted, but left to them to determine whether, under the law, the facts existed which warranted the issue of the bonds. If not so stated in terms (as by STRONG, J., in the case last cited) this is the principle underlying all the cases upholding this character of bonds. But when the clear purpose of the fundamental laws is to withhold from the legislature the power to confer upon municipal bodies the power to issue an indebtedness beyond a prescribed amount, and where too the legislature has inhibited such power, it would be most illogical, if not positively absurd, to say that such municipal agents had the power to determine whether the facts existed which warranted a violation of this restriction. We submit, that in principle, the doctrine of estoppel can not apply, for a municipality never can be estopped from insisting that its agents could not do, and had not done that which they were prohibited from doing by this fundamental provision. For in such cases no such discretion or right to determine is lodged with them. And, if it is conceded, that such agents may determine certain questions, and that their determination, right or wrong, concludes the corporation, then if they use language, the force and purport of which is fully met, without involving the violation of the constitution, or the legislative inhibition, this court will, in reason, and by every rule of logic, refer such language to that which they may determine, and not to that which it is not their province nor which they have any power to decide. The statement that the bonds were issued "in pursuance of an election of taxable inhabitants" does not of itself show that they were lawfully issued.

Dodge vs. Platte Co., 82 N. Y., 218.

This case, we think is on "all fours" with that of *Buchanan vs. Litchfield* with the exceptions following: 1. That the

act in Illinois did not repeat the limitation found in the constitution. 2. That the bonds there recited, that they were issued "under authority of the act of the general assembly * * * and in pursuance of an ordinance," &c. As to the second exception our case is stronger than that, because there the bonds recited the act and the submission, and that they were issued pursuant thereto, whereas the bonds now in suit do not. And, hence, the only distinction upon which the appellee can rely with any hope of taking this case out of that, is that as the Iowa act contained the inhibition, it was left for the school district authorities to determine whether or not the facts were such as to authorize the exercise of the power granted. In other words, the argument is that because the act as well as the constitution, prohibited the exercise of the power, the district is bound, whereas it would not have been if the inhibition stood upon the constitutional provision alone. But the prohibition of the statute contains no words of grant, nor does it give power of any kind. A limitation upon power can never be construed to confer it. The power must be found elsewhere. The power to issue bonds is given, but both the constitution and statute says not beyond a certain amount. And since both the act and the constitution prohibited the issue of bonds for the amount set afloat in this instance, a recital that they were issued by authoriry of an election, held or in conformity with an election held, does not necessarily nor fairly impart a compliance with the constitution. If under the Illinois constitution and legislation a "recital that the bonds were issued under the authority of the statute, and in pursuance of the said ordinance" would not conclude the defendant corporation, since such recitals "did not impart a compliance with the constitution," the argument is very much stronger, where the recital omits any reference to the authority of the statute, but refers alone to the election and its holding in conformity to such act; and where, as in this instance, it is said, not that the bonds were issued under authority of the act,

but by authority of the election held under the act. If in this we are wrong, then we most respectfully submit that you must extend the doctrine of this court upon the subject of municipal bonds further than would be consistent with sound policy, and further than you have been willing heretofore to go. Let us hope that such step will not now be taken.

II.

Bonds non-negotiable—powers of school districts limited—not those of general municipal corporations—duty of purchaser to inquire as to election, etc.

The argument thus far takes the most favorable view of the case for defendant in error. For by the common law these bonds were not negotiable. And we mantain that the law still is that paper of corporations like plaintiff in error, never pass beyond their power to show that they were issued without authority. In support of this proposition and others connected with or growing out of it, we present in part what was said by one of the attorneys for plaintiff in error, in the court below.

The *power* to issue bonds existed only through the *mode* provided in the second section of the statute referred to in the bond, and then only for the purpose there provided, to erect or complete a school house. The mode was "to submit to the voters of their district, at the annual or a special meeting, the question of issuing bonds contemplated by this act, giving the same notice of such meeting as is now required by law to be given for the election of officers of such district, *and the amount proposed to be raised by the sale of the bonds*, which *question* shall be *voted upon* by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said school board shall issue bonds to the *amount voted*."

This is not a general power to create a debt, or issue a bond. It is special, limited and restricted; and obtained only by a specific mode.

The notice required of the meeting was "ten days previous notice by posting a written notice in five conspicuous places therein, one of which shall be at or near the last place of meeting."

In this case no notice was given. The record does not show any *order* for an election, and there was no meeting of the board to make an order. No proposition for any sum was submitted, or voted upon. The only record about it is, "proceeded to vote on proposition to bond said independent district for the purpose of building a school-house."

These bonds, each and all, refer to one and the same vote, and to the same statute for authority to issue them, so that the bonds themselves show that they all have one date and one origin, and all issued for one purpose. It is said in the bond that the vote was July 31, 1869. That refers to the records *ordering* the vote, if it existed. Every man who took one of the bonds was, by the face of the bond, notified that no bond could be legally issued except as authorized by the statute then in force, and by the vote as therein required. If the proposition did not state "the amount proposed to be raised by the sale of the bonds," or if the vote was for a greater amount than the law authorized, no power existed to issue any bonds. And each bond is numbered. And the plaintiff sues on Nos. 2 and 30, and on several intermediate numbers, each for $500. The number on the bond is notice to everybody that it belongs to a batch, or series of $500 bonds. The No. 5 is notice of four others before it. And No. 30 is notice that it is a part of a $15,000.00 debt.

It is said that a part of these bonds are payable to order, and the others to bearer, and are therefore negotiable.

Transferability is not negotiability. Words of transferability are essential, but they do not make negotiability. Negotiability is an absolute right of the holder to demand, and by law enforce the payment, avoiding all equities of the maker of the instrument. A note payable on demand is not negotiable. A note over-due is no longer negotiable, though still

transferable. In *Fowler vs. Brantley*, 14 Peters, 131, it i
said "after maturity, such paper cannot be negotiated in th
due course of trade, though still assignable."

There is a habit of speaking of all public or civil corpora
tions as of one class. They are frequently called *municipa*
corporations; and so the inference is drawn that by analog
the liability of either *one* in a given case is the liability o
each and all in like cases. But they are not all *municipal*
and there is a wide difference between a city existing from
time immemorial, or under a charter with general powers t
contract and be contracted with, and with a legislative council
and a school district, existing only by statute, with only spe
cific conferred powers, and always subject to be annihilated by
the legislature, by one fell swoop, as all school districts have
twice been in Iowa. The constitution of Iowa on this point
is peculiar. It is "no county or other political or municipa
corporation shall be allowed," &c., thus making a distinction
between political and municipal corporations. In fact, the
the language recognized three grades.

Dillon on Municipal Corporations says, "Corporations in
tended to assist in the conduct of local civil government a
sometimes styled *political*, sometimes civil, and sometim
municipal." "All corporations intended as agencies in th
administration of civil governments, are public, as disti
guished from private corporations. Thus an incorporat
school district, or county, as well as a city, is a public corpo
ation, but the school district, or county, properly speaking,
not, while a city is, a municipal corporation." This distin
tion is important to our case. Dillon further says, "all m
nicipal corporati ns are public bodies, created for civil and p
litical purposes; but all civil, political or public corporatio
are not, in the popular use of language, municipal corpora-
tions."

In *Eaton vs. The Supervisors of Mitowoc County*, 44 Wis-
consin, 493, it is said, "towns are often called in common par
lance, and sometimes unguardedly in statutes, municipal cor

porations in connection with counties, cities and villages, but when so called it is in the sense of mere corporations, or *quasi* corporations *sub modo* only, and not in the sense of municipalities proper."

"In the use of the words 'counties or municipalities,' the language should not be construed to embrace towns and school districts, but rather to exclude them."

The power of cities are usually general. And they have legislative bodies. Yet if they are prohibited, or lack the general or specific power to make bonds or negotiable paper, this court holds the contract void, and bonds and paper issued in form negotiable, void *in toto*. These are the highest grade of municipal corporations. But towns, or townships as we call them in Iowa, and school districts are of a lower grade. They have no general powers and are not municipal corporations, but are only *quasi* corporations, having only special powers. *Harris vs. School District*, 8 Foster, 58-61, it is said, "school districts and road districts belong to a still lower grade, and to the lowest grade, and possess very limited powers." They are simply *sub modo*, or empowered to act only under the prescribed mode.

A political, *quasi* corporation is somewhat assimilated, in legal power, to a married woman. It has not, and never did have, inherent power to make negotiable paper. The name itself is *notice* to everybody that it has no power except what is specifically conferred. This ought not to be denied. A specific power to a political corporation to do one political thing *sub modo*, or under a specified mode, and only to a specific limit, is not a general power to do that thing. And every person at his peril is bound to know the existence of the power, the mode of obtaining it, and the extent or limit of the grant.

Then we say that the promissory note or bond of a married woman, or municipal corporation, and especially of a *quasi* public corporation, that is susceptible of being defeated, or investigated, by reason of lack of inherent capacity of the maker

to execute it, or make the contract, is not negotiable, though in form of negotiable paper. It may be on its face transferable, but it is a wrong use of language to call it negotiable, and it is a perversion of law to treat it as negotiable. Cooley's Const. Limitation, page 215, says, "yet as the doings of these corporations are matter of public record, and they have no *general* powers to issue negotiable securities, any one who becomes the holder of such securities, even though they may be negotiable in form, will take them with constructive notice of any want of power in the corporation to issue them, and cannot enforce them when their issue was unauthorized."

In *Mayor vs. Ray*, 19 Wallace, 475, it is said, "the power to borrow money is different. Such power does not belong to a municipal corporation as an incident to its creation."

In *Marsh vs. Fulton County*, 10 Wallace, 683, it is said in an action on a coupon bond, "this is not a case where the party executing the instrument had *general* capacity to contract and where the instrument might, for such reason, be taken without special inquiry into their validity. It is a case wh the power to contract never existed—where the instrum might with equal authority have been issued by any ot citizen of the county." Was that bond negotiable?

In *McPherson vs. Foster Bros., et al.*, 43 Iowa, *supra*, t Supreme Court of Iowa says: "the holders of the instrum in question cannot claim to be innocent purchasers with notice. They are the purchasers of the obligations o municipal corporation, and were bound to know that city possessed only express and limited powers."

In *Thomas vs. City of Richmond*, 12 Wallace, 353, 354, it said, "such corporations can exercise no power which is in express terms, or by implication, conferred upon it." " do not hesitate to say, therefore, that the common council Richmond had no power or authority to issue such pape and they could not bind the city thereby." And on pag 357, "the protection of public corporations from such unauthorized acts of their officers and agents, is a matter of

public policy in which the whole community is concerned. And those who aid in such transactions must do it at their peril." "It is against the laws of the state to issue them."

To the same purpose is Story on Agency, Sec. 319, where it says the goverment "does not undertake to guaranty to any person the fidelity of any of the officers, or agents whom it employs," &c., "and indeed laches are never imputed to the government." And in Sec. 307, "but in case of public agents, the government, or public authority, is not bound unless it manifestly appears that the agent is acting *within the scope* of his authority." * * "Indeed this rule seems indispensible in order to guard the public against loss and injuries arising from the *fraud*, or *mistake*, or *rashness*, or indiscretion of their agents. And there is no hardship in requiring from private persons, dealing with public officers, the *duty* of inquiring as to their real, or apparent power and authority to bind the government."

"The purpose of a private corporation is individual *gain*. It is difficult to conceive of a *private* corporation for purposes of individual profit where the borrowing of money and the execution of negotiable securities would be foreign to its purposes or repugnant thereto. And it is equally difficult to conceive of a *public* corporation, created for government purposes, where the borrowing money or the execution of negotiable securities is not foreign to its purposes and repugnant thereto."

Southern Law Review of January, 1872, page 4, 5.

But it is said that it is stated in the bond that it is issued by authority of an election of the voters of the district, in conformity with the provisions of chapter 98, of Acts of 12th general assembly, "and that is conclusive against the district."

In the first place the statute does not authorize that statement to be put in the bond. It is not a verity. It is a falsehood. The record of the district now in evidence proves it false. In *Veazia vs. Williams*, 8 Howard, 155, the court said, "a naked, willful lie, or the assertion of a falsehood knowingly is certainly evidence of fraud."

The legitimate effect of the court saying that this averment in the bond cannot be controverted, or is an estoppel, is to say that this printed lie in the bond, gives the negotiability to the bond. But such an averment does not constitute negotiable paper. The district itself has only the one specific limited power granted to it. The school board is not a general agent of the district. They never had any authority to put that lie in the bond. They are only special agents to do one specific thing, for one specific purpose, in one specific way, under specific limits. The law of special agency is applicable to them, and to all who deal with them. Their declarations are not binding on the district. Every man must know at his peril the existence and extent of his power, and that their acts are within the limit. Story on Agency, Secs. 17 and 126.

The assumption, or theory, that the recital is a verity and estoppel, in this case, sanctions a very low grade of morals in public officers. The law says, every man dealing with a public officer, or special agent, is bound to know at his peril that he has legal power to do the act, and the full extent and specific limit of that power. This theory says that if a lump of human putty, or an arch villian exercising an office, will write, or print in a note, or bond, that he is authorized by law to make it, that *proves* his right to do it, even though both the statute and constitution prohibit him from doing it. It makes a printed lie superior to both law and constitution. It invites fraud by such officers, and asks the court to legalize it.

In *Mechanics Bank vs. New York & New Haven R. R. Co.*, 3 Kernan, 631, it is said:

"Whoever proposes to deal with a security of any kind, appearing on its face to be given by one man for another, is bound to inquire whether it h been given by due authority, and if he omits that inquiry he deals at h peril."

And page 634—

"The fundamental proposition I repeat is, that one man can be bound only by the authorized acts of another. He cannot be charged because another holds a commission from him, and falsely asserts that his acts are within it."

In *McClure vs. Township of Oxford*, 4 Otto, 432, it is said:

"Municipal officers cannot rightfully dispense with any of the essential *forms* of proceeding which the legislature has prescribed for the purpose of investing them with *power to act* in the matter of such subscription. If they do, the bonds they issue will be void in the hands of all that cannot claim protection as *bona fide* holders." * * "Every man is chargeable with notice of that which the law requires him to know."

In *Gould vs The Town of Sterling*, 23 New York, 462-463, it is said:

"No representation of the agent as to the *fact* of his agency, or as to the *extent* of his power, is of any force to charge the principal." * *

And further—

"The agent here was designated not by the town, but by the legislature, and no power whatever was conferred by the town unless the assent of the tax-payers was obtained. A representation, therefore, by the supervisors and commissioners, in respect to such assent, would be a representation as to the very existence of the power, such representations as we have seen are never binding upon the principal."

The same principle is stated in the case of *Strain vs. The Town of Genoa*, 23 New York, 250-254.

In *Sillman vs. Cummings*, 13 Ohio, 116, it is said:

"When a power exists *independent* of the mode of execution, and has been defectively executed, it is not a case of want of power, but a defective execution, which a court of equity will aid. But where the power and mode are inseparable, the power resulting from the mode, and the mode has not been pursued it is not a case of defective execution, but a *want of power*, which a court of equity cannot aid" because to "amend the mode is to create the power."

In *Town of South Ottawa vs. Perkins*, 4 Otto, 266-267, the bonds recited that they were issued in pursuance of an election, and under and by virtue of the statute of Illinois. The statute

was regularly published. The defense was that it was not regularly passed. The Supreme Court said: "The doctrine of estoppel is totally inadmissible in this case."

The statute was held void and the bonds held void.

If an unconstitutional statute is void, and bonds under it void, it would seem the part of wisdom to hold that an unconstitutional lie, printed in the bond, is also void and creates no power.

In *Aspinwall vs. Board of Commissioners*, 22 Howard, 379, it is said:

"The subscription was made, and the bonds issued in violation of the constitution of Indiana, and are therefore without authority and void."

In *McPherson vs. Foster Bros.*, (43 Iowa, 57) and others before referred to (where a part of the opinion was originally written in reference to a city and not published) it is said:

"The purchaser of these bonds was for that reason required to look into the powers of the city and examine the *acts* of its officers by whom the bonds were issued, in order to ascertain whether the law authorized the instruments, and conferred authority upon the corporation and its officers to issue them."

That means they must know the record of the doings of the district board. To the same effect is—

Clark vs. The City of Des Moines, 19 Iowa, 209-211.
Taylor vs. Dist. Township of Wayne, 25 Iowa, 450.

Cooley's Constitutional Limitations, 215, says:

"As the doings of these corporations are matters of public record, and they have no general power to issue negotiable securities, any one who becomes a holder of such securities, even though they be negotiable in form, will take them with constructive notice of any want of power in the corporation to issue them, and cannot enforce them when their issue was unauthorized."

There is a broad difference between the recital that the forms, which are simply directory, have been complied with; and a recital that the specific acts which give or constitute jurisdiction, have been performed; and further, that the act

performed is within the limit of the power conferred. The recitals by which municipal corporations are sometimes said to be estopped to disprove, are not recitals of *legal power*. They are cases where the corporation had the general or express power to do the thing, but did not do it in the exact mode required or directed by the statute, and the recital stated it had been so done. The confusion here is, in the judge making dark in the opinion, what was before light by the law. The recital in the bond did not alter that case. It was not necessary to put the recital there. The statement of it was surplusage in the opinion. Let the whole fact be proved without the recital, and yet the law says that is only directory, and is not a bar against *bona fide* holders. But when the mode had to be followed to get the *power*, or when the power *never existed*, or, as in this case, when both the statute and constitution *prohibited* the thing, no court has ever held that power was *created* by a printed lie in the bond, saying the power existed when it did not exist.

If these authorities mean anything, they conclusively establish that it matters not what recital is in the bond. It is not a legal verity. It does not constitute negotiability. The bond of a *quasi* public corporation is always open to inquiry into the power of the corporation to issue it. The holder is bound at his peril to know that such a corporation has no power to make a note or bond unless it is specifically conferred. He must know that it is conferred, and the extent and limit of the power. And if the power exists, or is obtained only through the mode prescribed by the statute, he must know that the prescribed mode has so far been complied with as to constitute the power, else the bonds were void when made.

In *Marsh vs. Fulton Co*., 10 Wallace, 683, it is said: "It is a case too, where the holder was bound to look into the *action of the officers* of the county, and ascertain whether the law had been so far followed by them as to justify the issue of the

bonds. The authority to *contract* must exist before any protection as an innocent purchaser can be claimed by the holder."

Now, observe here, he is not to look at the recital in the bond, but must *go to the record*, and "look at the action of the officers." It follows that there must be an affirmative *record* showing the action within the limit of authority, and that the mode prescribed had been so far followed as to obtain authority to *make the contract*, and issue the bonds.

In our case the *contract* was made and the bonds issued in violation of both the statute and constitution. The law is that the holder, *before* he becomes a holder, is bound to go to the law and the record of the district, and must not guess or presume, but must, at his peril, know the existence and limit of the power of the district. And if the power exists only through the mode prescribed, and in that is limited both in purpose and amount, he must know that the mode prescribed has been so technically pursued as to obtain the power. And he is bound as well by what the record fails to show as by what is written. It is a well settled principle of law, that inferior courts, and bodies exercising extraordinary powers, the facts which give jurisdiction must appear on the face of the record.

Thatcher vs. Powell, 6 Wheaton, 125-126.

Now, if we go to the law and the record in this case, what do we find?

1. This school district has no inherent power whatever. It is a creature of law, always subject to be annihilated by the power that created it.

2. It never had inherent power to make negotiable paper.

3. It is unlike most cities, which have general powers to contract and be contracted with. There is not only no power conferred to contract a debt of over five per cent., but it is

positively prohibited from creating an outstanding indebtedness of over 5 per cent. on the taxable property of the district.

4. No negotiable paper except a bond can be made by the district, and that only under the specific mode prescribed by the statute: 1. Calling an election by the board of directors, giving ten days' notice of the meeting. 2. Submitting to the electors the amount to be raised by the sale of the bonds, and if a majority votes for the measure, then to issue the bonds to the amount *voted*.

This mode is the power. The record therefore must show that this mode has been followed. This is as essential as the statute itself, that grants the power through the mode.

Special powers are construed strictly.

Now, turn to the record of the district. By the record does this power exist? Does it exist to issue a bond even to the amount of 5 per cent.?

Does the record show an *order* for an election, or any specific sum or amount submitted to, and voted upon by the electors, or even what amount the people have power to vote for? Does it show that an election of the voters was holden? Where are the poll books of such an election? They never existed. But we are not required to stand here and prove a negative. These are all questions of power. The bond does not prove a power, even if there are a thousand lies printed in it. The holder must show the existence of the power. Before he bought the bond he was required to know what was in this record, and what was *not* in it.

Turn to the record, and there, March 15, 1869, no school-house fund, and an outstanding debt of $425, then existing.

April 7, 1869. An election and vote to issue bonds to the amount of 5 per cent. to build a school-house—voted down—3 for and 42 against.

April 23. Board met and adjourned to April 30, 1869.

There was no order at either of these meetings for an election to vote on the question of issuing bonds.

The next record is on the next page of the book, dated July 31, 1869. It is the pretended election referred to in the bond. The bond also refers to the statute. By the bond itself it is claimed that the power to issue it is in that statute and this record. The holder of the bond was by law bound, before he took the bond, to look at the statute and this record.

That statute required an election to be called and 10 days notice to be given. The record shows that that was not done. The statute further required an election by the voters of the district. The record does not show such an election. The most it shows is that the board met and "appointed Sec. *pro tem.*, and then proceeded to vote on the proposition to bond said Ind. Dist. for the purpose of building a school-house."

The statute requires to "submit to the voters of the district the question of issuing bonds," stating "the amount proposed to be raised by the sale of such bonds."

The record does not show any such proceedings. There was no jurisdiction without this. The statute further said the "board shall issue bonds to the amount voted." No authority exists to issue bonds except the amount as stated in the vote. If this record is barren, and does not show what that amount is, then the purchaser is bound to go to the record of the last assessed value, and know whether the amount voted is within the limit of the power.

But the record of the vote is not all. There must be a record of the issue of the bonds. And the holder of the bond is bound by the record of this district up to the date of the bond.

August 25, 1869.

The record shows a contract with Foster Bros. to build a school-house for $15,000. That contract is in evidence. And on that contract these thirty bonds were issued. There is the origin of these bonds. By that contract Foster Bros. were to be paid in the bonds of the district. Now, where is the record of the vote of the electors to either issue $15,000

of bonds, or to make that contract? Remember, the Supreme Court has said, "The authority to *contract* must exist before any protection as an innocent purchaser can be claimed by the holder." Now, where is the record by which the electors of the district conferred the power upon the board of officers to make this contract upon which these bonds were issued? The record does not exist. The power to make it never did exist. There is not only a lack of power, but the thing is positively prohibited.

The court has twice said, "The power to tax is a power to destroy." It denied the power of corporation officers to destroy.

In the case of *Loan Association vs. Topeka*, 20 Wallace, 660, opinion by Judge MILLER, it is said, "the validity of a contract which can only be fulfilled by a resort to taxation, depends on the power to levy the tax for that purpose."

Apply that to this contract to pay $15,000 of bonds. The whole taxable property of the district was only $47,989. That $15,000 was 31⅓ cents on the dollar on all the taxable property of the district. The annual interest on that contract is $1,500. By the statute the district was limited in taxation to a "tax not to exceed ten mills on the dollar in any one year." That amounted to only $479.86. Take that from the $1,500 interest, and it left $1,020.15 annually accruing debt beyond the power of the district to pay by taxation, and thus at once bankrupt the district.

That is not all. By the statute no bonds could run over ten years. The tenth part of this debt is $1,500. The statute required the tax to cover the interest and a *pro rata portion* of the debt. That and the interest is $3,000 each year, or $2,520.14 beyond the power of the district to levy a tax. Now, put it either way. If the power to levy this tax exists, then here is not only the power to destroy, but the actual destruction of the district. Or, if on the other hand "The validity of the contract depends on the power to levy the tax for that purpose," then the power not only never existed, but is

positively prohibited. And the contract makes a continual annual accruing debt of $1,020.14 beyond the power of the district to pay, besides accruing interest on that.

The plaintiff took notice of all this before he purchased the bonds. And yet he comes to this court and demands the court to judicially override the statute and constitution of the state. And like Eve in the garden, he says, I am beautifully innocent; the serpent, filthy lucre, beguiled me and I did eat. Therefore, the bonds are negotiable and the district must pay.

"What is not allowed to be done directly, cannot be done indirectly."

"Towns are the creatures of the law, with limited and clearly defined powers, and can do nothing which is not expressly authorized, or clearly implied from authority expressly conferred, within the scope of the legitimate objects and purpose of such corporation."

The last resort, and it appears to me the most fallacious position by the plaintiff, is that if the district had power, though limited in amount, and though obtained under specific forms or modes, to obtain it then, the presumption is, that the mode has been followed and the bonds are within the limit of the power so granted, and the purchaser was not required to look beyond the fact of the existence of such a power, nor even to know there was a limit to the power, or the mode to obtain it, but that the presumptions and recitals in the bond are conclusive and the district is estopped thereby.

It is a new doctrine of special agency, nowhere found in the text books, that if a special agent has a special, limited power to do one specific thing, and that only in a specific manner and to a specific limit, and these special instructions all made public, yet no one is required to know these special instructions. It is a special agency to make such bonds.

In *Mayor of Savanna vs. Hartridge*, 8 Georgia, 23, it is said: "It will appear, therefore, that powers near akin to those expressly conferred, are not for that reason to be taken by implication."

In *Hawkins vs. United States*, 6 Otto, 691, it is said, "individuals as well as courts must take notice of the *extent* of the authority conferred by law upon persons acting in an official capacity, and the rule applies in such a case, that ignorance of the law furnishes no excuse for any mistake or wrongful act." And on same page: "different rules prevail in regard to the acts and declarations of public agents from those which ordinarily govern in case of mere private agents." * * "But the government or public authority is not bound in such a case unless it manifestly appears that the agent was acting within the scope of his authority."

The record of the district must show this. Cooley's Constitutional Limitations, 195, 196 and (1).

In Dillon on Municipal Corporations, Sec. 381, it is said:

"The general principle of law is settled beyond controversy, that the agents, officers, or even city council, of a municipal corporation, cannot bind the corporation by any contract which is beyond the scope of its power." * * "The officers are but the public agents of the corporation. Their duties and powers are prescribed by statute, or by charter, which all person not only may know, but are bound to know." * * "It results from this doctrine that unauthorized contracts are void, and in actions thereon the corporations may successfully interpose the plea of *ultra vires*, setting up as a defense its own want of power under its charter or constituent statute to enter into the contract."

Again, in Sec. 419:

"But when the authority to act is solely conferred by statute, which in effect is the letter of attorney of the officer, all persons must, at their peril, see that the act of the agent on which he relies, is *within* the power under which he acts."

Suppose the statute, in the face of the constitution of Iowa, had authorized an independent district to contract a debt of thirty-one per cent. on all the taxable property of the district, and this $15,000.00 contract had been made, and these bonds issued in accordance with that statute. Would not this court hold the statute unconstitutional and void, and the contract and bonds void? Are the contract and bonds any

more valid for being in palpable violation of the prohibition of both the statute and constitution of the state?

"Then, where is the power expressly granted, or clearly implied from authority expressly conferred, for the independent school district of Steamboat Rock, or for the officers thereof, in the name of the district, to make this contract to pay Foster Bros. $15,000 in the bonds of the district, and thereby create an outstanding indebtedness of over thirty-one per cent. on the taxable property in the district? The power is nowhere granted. Is it, as plaintiff claims, 'clearly implied' from the *sub modo* power to contract a five per cent. debt, with a special prohibition not to create or allow over a five per cent. debt? And that, too, in the face of the constitution which prohibits the legislature from granting a greater power. No county, or other political or municipal corporation, shall *be allowed* to become indebted exceeding five per centum," &c. That is binding upon every court to *prevent* a greater indebtedness.

If the district has not the power to contract that debt, or issue the bonds, then it did not do it. It is not the act of the district; it is as is set up in defendant's answer, the act of the persons whose names are to it. The district repudiates it as an honest man repudiates a forged note or bond made in his name.

But we beg pardon for saying so much upon this question. The ground has all been thoroughly and repeatedly gone over by this court. The case, however, involves the all of our clients and may result in confiscating one-third of the property of every tax payer in the district. Hence, our anxiety to omit nothing which might possibly tend to save them. If there is anything by possibility in conflict with our views in *Marcy vs. Township of Oswego*, 92 U. S., 637 [which we do not admit, however], it must be regarded as overruled by the Buchanan case, for at least, that, being the latest utterance of this court bearing upon the subject with any degree of directness, must be accepted as the law of this and all subsequent

cases. The rule for which we contend, under the facts disclosed, is consonant with the best interests of the people—with sound public policy—with the great and fundamental rules which should govern the powers of municipal agents, and an adherance to it will be at least one long desired barrier against the efforts of those who clothed with a little brief authority—ignore all law, and all limitations, if thereby they can accomplish their own personal ends or the ends of those, contractors and others, who have them in their keeping. And certainly, in view of all the circumstances of this case, this court will incline to limit, rather than enlarge by construction, the power of these mere ministerial and inferior officers.

GEO. G. WRIGHT AND
E. W. EASTMAN,
for Plaintiff in Error.

SUPREME COURT U. S.
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IN THE

Supreme Court of the United States.

No. 1122.

INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA,
Plaintiff in Error,

vs.

JOEL STONE, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

REPLY OF PLAINTIFF IN ERROR,

—BY—

GEORGE G. WRIGHT AND E. W. EASTMAN.

P. C. KENYON, Legal Printer, Des Moines, Iowa.

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Plaintiff in Error,
vs.
JOEL STONE, *Defendant in Error.*

GEORGE G. WRIGHT AND E. W. EASTMAN,
For Plaintiff in Error.

NOURSE & KAUFFMAN, *for Defendant in Error.*

REPLY OF PLAINTIFF IN ERROR.

We argued at such length in opening that we confess a reluctance to say anything more. And yet something—especially in view of the positions taken by opposite counsel touching the record—is perhaps demanded.

I.

While John Mosher and certain other parties were not served otherwise than by publication in the McPherson case, it is nevertheless true that they appeared thereto by their attorneys, and were hence fully in court (folios 109 to 117). The record also shows proof of publication as to these defendants—that they demurred to the petition—answered, asking affirmative relief, and also filed their cross-bill (119). The Su-

preme Court also found that they were served by publication, as provided by law (187). That the court, therefore, had full jurisdiction over said parties, and that the decree in that case bound them, cannot admit of a doubt.

II.

It is said that plaintiff in error was not a party to the proceedings (*McPherson and others vs. Foster Bros.*) set up by us in bar of this action. To show this reference is made to the record (179) where the recital is found that it was "distinctly understood on the trial *before the referee* that the Independent District of Steamboat Rock was not a party plaintiff." And in aid of this position it is insisted that the record which just precedes this (7th line, near close of folio 178) is an evident mistake, for that the word "not" has been omitted between the words "if" and "in." In argument it is further said that the paragraph where this alleged mistake occurs is not an order of the court, but a mere recital of counsel.

Cases in the Supreme Court of Iowa are tried upon abstracts—not full transcripts. It hence occurs that a synopsis of orders, or of evidence, or what takes place, is stated, which if not objected to, is taken as correctly and truly stating the record, as much so as if the entire record was set out. This, and no more, was done in this instance, and what is there found must, therefore, be taken as absolute varity. We must, and do, as a consequence, deny that the record should be read as counsel claim. And especially so since in the preceding paragraph it appears that the motion to supply the one to make the school district a party was *sustained*. Now, the record referred to by plaintiff's counsel (179) recites that this motion to supply "was sustained for the purpose of supplying lost papers, and for no other purpose; *it having been* distinctly understood on the trial *before the referee* that the Independent District was not a party plaintiff." That is all straight enough, and there is no conflict. Properly construed,

we have this condition of things. On the 6th of November, 1874 (after the trial before the referee), we filed our motion to supply the lost paper, which had been filed before the reference, to-wit, April 8, 1873 (177-8). If it had been understood *before the referee* that the district was a party there would have been no necessity for supplying this paper. And it was because it was not so understood—and to have the court pass upon that question, or to have it so made a party, that the record shows the connected history, and that the lost paper was supplied, that thus the record might be full. And then the record correctly enough continues, and with perfect consistency, that this motion is not set out, nor the action of the court thereon, for the reason that "it was *afterward agreed and understood that the said Independent District should* be treated as if in court." The record in one place says "it *having been* distinctly understood," etc. (that is in the past)—in the other it says that it was "*afterward* agreed and understood that the said Independent District should be tried as if in court." The one relates to the past (before the referee); the other to what was agreed and understood *after that, before the court.*" There was no necessity for referring to this motion to supply lost papers if the district was not at any time in court. Whereas, it was consistent and requisite to a correct understanding of the how and the why it was made a party to recite the steps which were taken to effect this result. By our construction the record is consistent—under theirs it is filled with tautology and surplusage.

But, suppose it was not technically a party to the record, but that, as we purposed to show, the suit was "prosecuted by the defendants herein at its expense, by counsel employed by it" for that purpose (185)—then is it not true that it is entitled to claim the benefit of the adjudication as a bar? [We concede that "defendant herein" means the district, and not Stone, and had no thought that anyone could for a moment suppose otherwise.]

Counsel refer to this part of the record more than once as showing that this evidence was offered "for the purpose of making said record admissible," and not for the purpose of contradicting "the positive evidence of plaintiff and others through whose hands these bonds had come." And in the same connection it is urged that the McPherson suit was not one "for the collection of the bonds." Let us look at these objections.

The court below had held that the record as offered, without more, was not admissible—and, as this court can see from the argument of counsel, this result was reached, in part at least, because the district (plaintiff in error herein) was not a party. We submit that this, as we have attempted to show in the opening, was not warranted by the record. But to make our case as strong as possible, and in order to obviate that objection—or, "for the purpose of making the record admissible" as against that objection, we offered to show that the district had prosecuted that action at its own expense, and by counsel employed for that purpose. The object of this offer, as your Honors can readily see, was to show that the district, if not technically a party, had notice of that action—did appear thereto, by counsel, and that the prosecution was at its own proper expense (and, in this connection, see resolution of board, folio 110). It will not be forgotten that the officers of the defendant district were parties—that plaintiffs therein were taxpayers in said district, and prosecuted the action for all the people and taxpayers thereof, the question being one of common and general interest (103)—that the district was treated by the Supreme Court as within its jurisdiction, and hence was enjoined (192)—and that if it was not a party by name, yet we claim that it was the real party in interest, and, in fact, conducted the suit. And not only so, but that by its relations to the parties, plaintiffs, and its officers, defendants, it was bound and concluded by the litigation. As every taxpayer of the district, under the Iowa Statute, (Rev., 1762, Code 2549.) was as much concluded as the plaintiffs named, or was the

district itself. We are assuming, now, that Stone was estopped as to parties plaintiff actually of record (of which hereafter), and that if so bound, then the district is entitled to the benefit of that adjudication, for that thereby the estoppel was mutual. Though the district may not in form, and by name have taken upon itself the prosecution, yet, in fact, it did so. This is sufficient to entitle it, as against the actual parties thereto, to claim the estoppel.

Chirac vs. Reinecker, 2 Pet., 622.

Chicago vs. Robbins, 2 Black, 423.

S. C., 4 Wall., 657.

Lovejoy vs. Murray, 3 *Ib.*, 18.

Bender vs. Frouberger, 4 Dall., 436.

Kip vs. Brigham, 6 John., 158.

McNamee vs. Moreland, 26 Iowa, 112,

and cases cited.

Certain it is that if the decision in the first suit had been adverse to the plaintiff (McPherson and others), the district, though not a party to the record, would have been bound, or concluded as to all the parties actually so, for the reason that it prosecuted the action at its own expense, by counsel employed by it for that purpose. And if thus bound it must logically follow that it is entitled to the benefit of that adjudication, at least against the same parties. So that what we maintain now is that if Stone had been a party to that proceeding, the district could plead the judgment therein in bar of this action. And the very object of the proposed evidence was to make the record admissible whether the district was a party, by name, to it or not. For if the district did prosecute the action, as we proposed to show, then it was, in legal contemplation, a party to the record, and being bound, if the finding had been adverse, so it is entitled to its benefit, or to the decision and finding that the bonds were invalid. We say, in a word, that the district was a party—was in court—

was let in to prosecute ; but whether so or not, it knew of the prosecution, in fact, conducted the same, and is hence entitled, upon either theory, to claim the benefit of the same.

In this aspect of the case, and aside from whether Stone was a party or not, it was quite immaterial what he and others may have said as to their knowledge of that prosecution. For at present we are dealing with the single inquiry whether the district, either from the record or from the offered evidence, or both, was entitled to the benefit of the adjudication. What Stone and others may have testified has nothing to do with this question. For, if Stone, as to the actual parties was bound, then he was as to the district. The record, if admissible upon the assumption that we could make the proof offered, was then a verity, and we were entitled to claim for it all the force and effect it might have if the district was, by name, indisputably a party to the proceedings. Whether Stone was bound by it is another question. And however often, or however positively, he and others might testify that they knew nothing of the pendency of that action would make no difference as to the admissibility of the record, as far as the relations of the district to it was concerned. If the district can claim anything under the judgment, or proceedings, one essential step is made, whatever the ignorance of Stone and others.

Assuming, then, that either from the record or upon the proof offered, or both, the district could so claim, we turn to Stone's relations to that prosecution. And here we have but little, if anything, to add to what was said in opening. We there attempted to establish that Mosher was in law, as also in fact, the owner of the bonds then in controversy—that his act was the act of Stone, and bound him—that whether the court was justified in so finding as a matter of law under all the evidence offered ; at least, it was a question of fact which should have been left to the jury, whatever Stone and others may have sworn as to their knowledge or want of knowledge. We concede that Stone was not a party by name to that

record, and yet insist that he put it into the power of Mosher to represent him—that he did represent him—that he, Mosher, could have sued upon these bonds in his own name—that he did, in fact, so sue—and that it is absolutely incredible, Stone's statement to the contrary notwithstanding, that he remained all the time in blissful ignorance of what was taking place, and what was the result of that litigation. Without this record we could not take a step toward contradicting Stone. The very object of its admission was to show that Mosher, having the powers given to him by Stone when he let him have the bonds, had brought or defended the action involving their validity, and the result. If no action had been brought—if there had been no litigation—of course it was quite immaterial for what purpose Mosher had the custody of the bonds. This record out of the case, it was quite unnecessary to show that Stone testified ever so falsely as to the circumstances attending the delivery of the bonds to Mosher. But this record in, then we begin to see, or, at least, the jury might so find, how little reliable the statements of Stone and others as to the custody of these bonds. For, by this record, as we proposed to make it (185), it appears that all the bonds—those referred to by Howell & Mosher, Leach and Chappel, as well as all the others, were in John Mosher's possession, and produced and offered in evidence by him on the trial of the McPherson case. And we hence contradict their statements—or, at least, have evidence tending to contradict them—that these same bonds were in their hands, or held by them, from 1869 and 1870, until sold to Stone, in 1878. We would show thereby, also, that there was this litigation to which Mosher and others were parties representing themselves as owners of all these bonds—that attorneys appeared for them setting up ownership in them, and insisting upon their validity—and have a right to argue therefrom to the jury that Stone never parted with them for the purpose, nor in the manner, stated by him, but that in truth and in fact John Mosher and the other defendants either owned them at the time, or that Stone had

knowledge of what was going on, and, by not objecting, was concluded by that proceeding. It will not do to say that because Stone swears that he let Mosher have these bonds for a specific purpose, and the other witnesses swore to the custody of others for twelve years, that, therefore, they were not under the control of Mosher; that there was no binding litigation; that Stone was not concluded by what took place. For that reasoning begs the whole question.

But we argued this aspect of the case so fully in opening, and counsel have done so little tending to answer us, that we will not follow it further. It is idle for counsel to talk about its being "impertinent" for Stone to insist upon knowing what Mosher wanted possession of the bonds for. It seems that he was so "impertinent," and that Mosher told him "to aid him (Mosher) in collecting coupons belonging to other bonds of the same issue about which he (Mosher) was having trouble." Mosher did therefore have something "more than a bare right of possession." He (Stone) did do more than "intrust him with the possession." He let him have them coupled with a power, with a discretion in their use, and we proposed to show that he did use them in accordance with that understanding, or at least in a manner not inconsistent with the express object had in view and agreed to when they were delivered.

The *bringing* of the suit itself against Mosher might not have bound Stone. It was, however, the *defense* of that suit, presumably and reasonably to aid him, Mosher, in collecting his coupons, that enures to the benefit of the district as against Stone. If Mosher had sued on them we insist that Stone would have been bound. And if being sued, he appeared to the action and asked affirmative relief the estoppel is equally conclusive. Mosher had more than a mere possession--it was more than that of a "financial agent." He was more than a simple custodian, and it will not do for counsel to ignore, as they most studiously do, the circumstances surrounding the transaction, the object of Stone and Mosher in passing to the latter such bonds payable to bearer or indorsed in blank. In

a word, your Honors have before you a case where, if the bonds had been paid or adjusted by Mosher when in his hands, Stone would have been bound, and where, as a consequence, he is equally bound by Mosher's efforts to collect them.

It is urged, however, that these bonds were not delivered to Mosher until *after* the litigation commenced. How can this possibly help Stone? For Mosher had been *litigating* for *two years*, went to Stone and got these bonds for the purpose stated (98) and never *said a word* about the litigation! And though the case had been pending for these years, he at once, upon obtaining these bonds from Stone, by his counsel, set up ownership in them in himself and the "School Furniture Company"—in all the thirty bonds (119)—did have them all (3, 4, 11, 14, and all of them), and never told Stone a word about it! Nor did Stone know anything about what he was doing or had done for five years thereafter!! He got the bonds in 1874, and at once, in April of that year, he and the other defendants filed their "amended answer and cross-bill (folio 118), because he then felt that he was in a position to be aided in collecting other bonds and coupons about which he was having trouble," and that this was the best way to do it. And yet Stone was innocent—knew nothing of all this; was in no manner in fact or in law controlled or concluded by what Mosher was doing or by that litigation! The proposition is too absurd—and especially in view of our right to take the opinion of the jury upon such a record and such a showing—to admit of calm or other argument.

III.

Validity of Bonds.

If this case can by any fair logic be taken out of the rule or principle recognized and stated in *Buchanan vs. Litchfield* (102 U. S. 278), then defendant in error might have some possible hope that the judgment would be affirmed. And this is the whole effort of counsel. This defeated, they are perfectly conscious that their case is at an end.

These bonds do not recite that they "were issued *in pursuance of the statute.*"

They do not recite that they "were issued in *accordance with the constitution.*"

Nor do they recite in any form that "the proposed indebtedness was *within the constitutional limitation.*"

Nor that they were issued "under circumstances which permit their issue."

They simply recite that they are "issued by the board of school directors, by the authority *of an election* of the voters of said school district held on the 31st day of July, 1869, in conformity with the provisions of Chapter 98, Act 12, of the General Assembly of the State of Iowa."

Now, if a recital that "bonds are issued under the *authority of the statute* and in *pursuance of the city ordinance*, does not necessarily import a compliance with the statute" (102 U. S. 292), then we submit with a confidence unmixed with a lingering doubt, that the recital found in these bonds does not either necessarily or reasonably import such compliance.

The clear purpose of the constitution was to *withhold* from the legislature all pretence of power to invest counties, cities, townships, school districts, or municipal corporations with authority to incur any indebtedness in excess of the amount provided, and this purpose is fully and in apt words reflected in the legislative act in question. It does not restrict the exercise of the power granted to cases in which the aggregate indebtedness of the district was within the limit which the constitution and statute declares no district should exceed.

Ours is not therefore a case of power granted with discretion conferred in its exercise, but one where the power attempted to be exercised is expressly *withheld* both by the constitution and statute. If these bonds had contained the recital that the district indebtedness increased by their amount was within the constitutional limit, or recitals which upon any just construction amounted to a like representation, you might have a case falling within those relied upon by

counsel, and the district might be estopped. But there is no recital in this instance even approaching this.

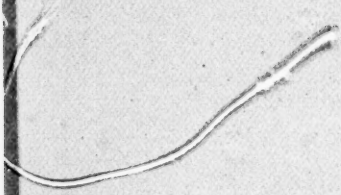
Of all the cases decided by this court, involving a like question, no one can be found so absolutely barren of recitals or representations by the municipal authorities tending to the prejudice or misleading of a so-called *bona fide* holder. To uphold these bonds therefore you must go farther—very much farther than ever before—away beyond any line "consistent with reason and sound policy"—further than this court has ever been "willing to go."

But we need not add to what we said in opening—nor could further words give force to what is so well said in the cases cited, and especially that upon which we most strongly rely, and which, followed, must, as it seems to us, necessarily result in the reversal of this judgment. [See this case cited and applied in *County of Bergen vs. Merchants Bank* (WALLACE, J.), 12 Fed. R., 743.]

We referred in opening, so far as we deemed it necessary, to all the cases cited by counsel (Arg., 19) except the more recent ones found in 3 and 4 Morrison's Trans. As to these we have simply to say that they are in nowise in conflict with what we claim. In our case the bonds are far from containing the recital that "all the conditions precedent to their lawful issue has been complied with," or that "all the conditions upon which this bond was to become a binding obligation of the county of Clay [Independent School District, etc.,], have been complied with." *(Clay County vs. Society for Savings*, 3 Morrison, 662.) Nor is this a case where "in effect it is represented to the public by the recitals that the bonds were issued in all respects in conformity to law, and that nothing remains to be done which was essential to the liability of the district thereon." (*Life Ins. Co. vs. Bruce*, 4 Ib., 670.) And so of the other cases cited. Neither in principle nor in their facts are they analogous to the one at bar.

We leave the case in your hands. If the property of a betrayed and outraged people—with a rickety school-building, a standing monument of the unauthorized and oppressive acts of petty officials—the fraud of manipulating contractors, and a constant reminder of the persistent efforts of men like Stone and Mosher, by suit after suit, to rob them of their all—we say if their property must be thus confiscated under the forms of law, then they will submit with the consciousness that though the law may thus speak, justice is silent. The one will not be silent, nor, as we confidently believe, the other so speak.

GEO. G. WRIGHT AND E. W. EASTMAN,
For Plaintiff in Error.



16-183

OFFICE SUPREME COURT U.S.
FILED
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JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

No. 1122.

INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN COUNTY, IOWA,

Plaintiff in Error,

vs.

JOEL STONE, *Defendant in Error.*

BRIEF AND ARGUMENT

FOR DEFENDANT IN ERROR.

NOURSE & KAUFFMAN,
For Defendant in Error.

KENYON & COTTLE, Legal Printers, Des Moines, Iowa.

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vs.
Joel Stone,
Defendant in Error.

GEORGE G. WRIGHT AND E. W. EASTMAN,
For Plaintiff in Error.

NOURSE & KAUFFMAN, *For Defendant in Error.*

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT.

This suit was brought in the court below by Joel Stone, plaintiff, a citizen of New York, against the Independent School District of Steamboat Rock, in Hardin County, Iowa, upon bonds and interest coupons. The bonds were a part of an issue amounting in all to $15,000, and were issued under and by virtue of the authority vested in independent school districts under and by virtue of Chapter 98, Laws 12th General Assembly (1868) of the State of Iowa. At the time the bonds

were issued this law had been in force only a little over a year and was not then found otherwise published than in the compilation of the Laws of the 12th General Assembly of the State of Iowa. We set out verbatim the 1st and 2d sections of this act as follows :

An act to authorize independent school districts to borrow money and issue bonds therefor for the purpose of erecting and completing school-houses, legalizing bonds heretofore issued, and making school orders draw six per cent. interest in certain cases.

SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That independent school districts shall have the power and authority to borrow money for the purpose of erecting and completing school-houses by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall have been made: *Provided*, No district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.

SEC. 2. When any independent district has procured the site for and is ready to erect or has erected and is desirous of completing its school-house, it shall be lawful for the school board of such district to submit to the voters of their district at the annual or a special meeting, the question of issuing bonds as contemplated by this act, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds, which question shall be voted upon by the electors; and if a majority of all the votes cast on that question be in favor of such loan, then said school board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars, due not more than ten years after date, and payable at the pleasure of the district at any time before due, which said bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The treasurer shall stand charged upon his official bond with all bonds that may be delivered to him, *provided*, that any bond or bonds not negotiated may be returned by him to the board.

We also set out an exact copy of one of the bonds as follows :

No. 17.

$500.00.

THE INDEPENDENT SCHOOL DISTRICT OF STEAMBOAT ROCK, HARDIN CO., IOWA.

The Independent School District of Steamboat Rock, Hardin Co., Iowa, promise to pay to bearer at Hardin County Bank, Eldora, on the first day of July, 1880, five hundred dollars for value received, with interest at the rate of ten per cent. per annum; said interest payable semi-annually on the first day of July and January in each year thereafter at Hardin County Bank, Eldora, on the presentation and surrender of the interest coupons hereto attached.

This bond is issued by the board of school directors by an authority of an election of the voters of said school district, held on the 31st day of July, 1869, in conformity with the provisions of Chapter 98, Acts 12th General Assembly of the State of Iowa.

In testimony whereof the said Independent School District, by the board of directors thereof, have caused the same to be signed by the president and secretary, this first day of July, 1870.

[Signed.] J. M. COMSTOCK,
President of the Board of Directors.

T. H. ROBERTSON,
Secretary of the Board of Directors.

(Across the face in red ink) $500.00.

(On margin) countersigned Wm. Campbell, *Treasurer of School Board.*

The defenses set up are in brief:

First, a denial of the execution and delivery of the bonds, as to which, however, there was no issue in fact on the trial.

Second, a denial that the preliminary steps were taken such as to authorize the issue.

Third, that bonds were issued to an amouut in excess of the constitutional limitation of five per centum of the taxable property of the independent school district.

Fourth, former adjudication of plaintiff's cause of action is averred.

The trial was before the court and a jury. The jury made the following special findings:

1. That the defendant, the Independant School District of Steamboat Rock, by their proper officers issued the bonds in suit (a correct copy of one of said bonds and coupons is set

out in plaintiff's petition, and all of said bonds and coupons are of the same form), and the bonds in suit are a part of an issue of fifteen thousand dollars, and at the time of the issue of said bonds said district was indebted in the sum of four hundred and twenty-five dollars, and had no money in the treasury.

2. That at the time said bonds were issued the assessed value of the property of said district of Steamboat Rock, defendant, as shown by the last assessment just before said issue of bonds, was the sum of forty-seven thousand nine hundred and eighty-six dollars ($47,986).

3. That bonds Nos. 2, 5, 6, 9, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 30, and the coupons belonging thereto, were purchased by the plaintiff, Joel Stone, for value before the maturity of said bonds, and in good faith without actual notice of any facts impairing their validity.

4. That bonds Nos. 3 and 4, and the coupons belonging thereto, were purchased by John W. Chappel, for value before the maturity of said bonds, and in good faith, without actual notice of any facts impairing their validity, and were sold and assigned by said John W. Chappel to plaintiff, in September, 1878.

5. That bonds Nos. 11 and 14, and the coupons belonging thereto, were purchased by Josiah G. Leach for value, before the maturity of said bonds, and in good faith, without actual notice of any facts impairing their validity, and were sold and assigned by the executor of said Leach to the plaintiff, in September, 1878.

6. That the whole amount of the bonds and coupons matured at the commencement of this suit is thirteen thousand six hundred eleven and 83-100 dollars (13,611.83), plaintiff not claiming to recover in this suit on those not matured when suit was brought.

Under the direction of the court, the jury on the foregoing special findings of facts, find for the plaintiff a general ver-

dict, and assess his damages at thirteen thousand six hundred eleven and 83-100 dollars.

[Signed.] J. M. LOVE, *Judge.*

Upon these special findings the court ordered judgment to be entered in favor of plaintiff for the amount of the matured bonds and coupons, amounting to $13,611.83, to which direction of the court the defendant, the Independent School District of Steamboat Rock, took exceptions. A bill of exceptions was also filed, showing that upon the trial of the case defendant offered in evidence a record in a case entitled *A. S. McPherson et al. vs. Foster Bros.*, being a case tried in the state court, which record was not admitted in evidence. (For the record see folios 101 to 184, both inclusive.) To the refusal of the court to admit this record the defendant, the Independent School District of Steamboat Rock, also excepted. The only other offer made in the course of the trial to which exception was taken is shown by the bill of exceptions, folio 185, which we set out verbatim.

"And be it also remembered that in connection with the foregoing proofs, and to make said record admissible, the defendant offered to prove also that said cause of *McPherson et al. vs. Foster Bros.*, was prosecuted by the defendant herein at its expense, by counsel employed by it to prosecute the same, and that at the trial of said cause all the bonds in suit herein were in the hands of said John Mosher and produced by him on the said trial, which offer was made for the purpose of making said record admissible, to which offer of the record the plaintiff still objected as immaterial and incompetent, which objections was by the court sustained and the record excluded, to which the defendant excepted."

The bill of exceptions also shows in brief certain testimony offered by plaintiff, and admitted before plaintiff rested his case. See folios 97 to 100 inclusive. Also there is contained in the record a stipulation as to certain facts which was offered before the jury. See folios 84 to 96 inclusive.

ARGUMENT.

The first point relied upon by plaintiff in error relates to the refusal of the court to admit in evidence the case of *A. S.*

herein" in fact prosecuted the case of *McPherson et al. vs. Foster Bros.* We quote the words "defendant herein" to call attention to the fact that these are the words used in the bill of exceptions, and they refer to the Independent District and not to Joel Stone who in this appeal, but not of course in the court below, is the "defendant herein." The offer, as shown by the language of the bill of exceptions already set out, was to show that the Independent District in fact prosecuted the McPherson case.

But the record offered showed (folio 179) just the reverse, and recites that it was "distinctly understood" that the district was not a party. Can parties thus agree and have their agreement made a part of the orders of the court, duly entered upon its journal, and then introduce *parol* evidence in another proceeding to show just the reverse? The case is quite different from that where it is sought to show that one not named in the record in fact prosecuted the suit for his own benefit but in the name of another. Such proof offers no contradiction of the solemn agreement of parties or orders of the court. The very purpose of this understanding was that parties might be governed accordingly in their offers of proof or trial of the cause. Can it be possible that those engaged in prosecuting this McPherson suit can come into court in that case and say to opposite counsel we will agree with you and the court shall enter our understanding of record that the district is not a party to this suit, and then contradict their own recorded agreement by *parol?* The opposite party concurs and it is made a matter of record. Thereupon the case proceeds in view of this agreement. Defendant no longer needs to try his case as against the district, knowing that the result can neither help or hurt him in a subsequent contest with the district; he acts accordingly. Is it possible that in another proceeding against this district a showing can be made by *parol* in the teeth of this record that will preclude a trial of the merits as against the district? Such a proceeding would be a mockery of justice, and a travesty upon fair deal-

ing. It would make of agreements solemnly made a matter of record in open court, pitfalls for the parties thereto, who in good faith enter into them and act upon them.

But if it be held that such proof can now be made, and for such a purpose, and to thus contract the record and in violation of the agreement of the parties duly entered of record, and that the proof offered would, if received, have made the Independent District a party to this record and therefore bound by it, it still remained necessary by some means to make Joel Stone a party to the suit before the record could be used against him. It is perhaps the first case on record where an attempt is made to bring into the record parties not party to it, on *both* sides of the controversy.

In order to bind Joel Stone, the other offer already set out in the extract from the bill of exceptions, was made and the question therefore arises whether that proof thus offered would have rendered the record admissible In this connection we call especial attention to the language of the bill of exceptions, twice repeated in a single paragraph, of the purpose of the offer, first to show that the Independent District prosecuted the McPherson case, and second, the offer to show that on the trial the bonds were in the possession of Mosher and were produced by him. This purpose is in a painstaking manner set out in this paragraph in the following language, which we again quote:

"And be it also remembered that in connection with the foregoing proofs, *and to make said record admissible*, the defendant offered, etc."

And at the end of the sentence this language is again repeated in the following form, to-wit:

"Which offer was made *for the purpose of making said record admissible*."

By carefully noticing the exact questions thus presented by the record we will be able to pass over very much of the argument for plaintiff in error without lengthy notice. The question therefore is, would the evidence offered as above have

made the case of *McPherson vs. Foster Bros.* admissible in evidence in the suit. We cannot discuss this question at any length. Upon no conceivable principle would the record then have been admissible, supposing it to be true that the expense of the suit of *McPherson vs. Foster Bros.* was borne by and counsel employed and paid by the Independent District. It was neither a suit for the collection of the bonds nor was it a suit to which Joel Stone was in any way a party. Suppose it to be true that on the trial of the McPherson case John Mosher produced the bonds now in suit and offered them in evidence, it would not follow that an adjudication therein would be binding upon Joel Stone by any means. But this offer must also be considered in connection with the testimony of Joel Stone and others, to which we have already referred, set out in folios 97 to 100 inclusive, showing a purchase of the Joel Stone bonds in suit and the delivery to Joel Stone thereof and the payment thererefor in 1869 and 1870, and that he received said bonds and retained the same in his possession until sometime in 1874, (more than two years after this suit of *McPherson et al. vs. Foster Bros.* was begun). That he, Joel Stone, had no knowledge whatever of this suit of *McPherson vs. Foster Bros.* That he had no counsel employed with respect to it and knew nothing whatever of its existence or of its ever having had an existence until informed by his counsel in this case after the bringing of this suit.

At this point another recitation in the bill of exceptions becomes important. It is found at folio 100, and follows in order the testimony introduced by plaintiff of the purchase and possession of the bonds in suit and is as follows :

"And be it further remembered that no evidence was introduced *or offered* to contradict this testimony of plaintiff and Howell Mosher, E. A. Nash and John W. Chappel, unless it be found in the evidence admitted or offered, as shown by this bill of exceptions."

Now, the only testimony admitted or offered aside from the agreed statement of facts, and the testimony of the gentlemen above-named as to the purchase and holding of the bonds

in suit, was this record in the case of *McPherson et al. vs. Foster Bros.*, and the testimony we have now under discussion offered, "for the purpose of making this record admissible." In other words it was not claimed in the court below that testimony would be introduced to contradict the positive evidence of plaintiff and others, through whose hands these bonds had come, upon any material facts testified to by them. Joel Stone explained how it came that John Mosher at one time did, for a time, have possession of his bonds. It was not claimed that this explanation could or would be contradicted, and no testimony was offered for that purpose.

It is of course unnecessary for us to follow counsel in his argument to the effect, that Mosher was the owner and had the legal title and right to sue these bonds. There is absolutely nothing in the record to support such a position. There was no authority express or implied in what transpired between Mosher and Stone to sue or defend, in behalf of these bonds. Mosher obtained nothing but the bare right of possession of the bonds. The bonds were all in the same form, and failing in getting possession of the bonds from which his own coupons had been detached, he might well have desired these that he might show form and recitals. It would have been impertinent for Stone to insist upon knowing what Mosher wanted possession of the bonds for. It still remains true that Stone only entrusted him with the possession of the bonds. The offer of evidence went no further than to show bare possession of the bonds, and that too for a specified purpose.

The offer was to show simply that Mosher had possession of the bonds at the trial, a fact perfectly consistent with the ownership of Stone and the other facts testified to by him. In other words, the case stands as though it were now admitted that Mosher had at that time (at the trial) possession of the bonds. But how does that fact affect the right of the parties or render the record admissible? It still remains true and uncontradicted that Stone owned them and counsel did not offer to show that Mosher acquired any other right to

or control over them than as stated by Stone. Were the jury to guess or find without proof that it was something else or other than the proof shows it to be ?

But counsel for plaintiff in error discuss the question as though it were a case of payment of the bonds to or collection thereof by one having possession. Without discussing the law of such a case it is sufficient to say that there is no such question involved here. If A is in the manual possession of bonds of another, is it possible that an antagonist has a right by the fact of possession to bring a suit against A and make a record that shall bind the owner of the bonds? If this be so, suits may be brought at any time by or against our financial agents, or by or against those who may have manual possession of our securities that will absolutely bar us of a hearing thereon, although the pendency of such a suit never reaches our ears. And is the owner to be bound by the cry of his antagonist that he brought the suit against the party having possession, *supposing* he was the owner. The bringing or trial of a law suit is not such an act as, if done upon *appearances*, would estop other parties. Not only so but negotiable paper, in many respects forms an exception to the usual rule, as to the effect of former suits respecting it. *County of Warren vs. Marcy*, 97 U. S., 104.

Mosher had no interest whatever in these bonds. He was not even an agent for any purpose. He was a mere custodian by the courtesy of Stone.

The blunder of his attorneys, or even if it had been the falsehood of Mosher in stating in the so-called cross-bill (which the record offered itself shows was withdrawn), that he was the owner, affected no one. It is utterly impossible for us to see how it can be claimed that the act of Stone in giving Mosher the custody of these bonds gave him any authority whatever to bring or defend suits thereon or in respect thereto. The trouble spoken of by Mosher related to other bonds of the same issue, not to these bonds.

Before this record can be admitted as against Stone, it must be shown (he not being a party by name), that in some other way, as by controlling the defense, he in fact defended it, and is therefore bound by it. And yet, not only it is not proposed to make any such proof, but the exact opposite being already shown, it is not even proposed to contradict it. The bare fact of possession at the trial, which was all the offer embraced, did not contradict (because not inconsistent with) the other facts which were already in evidence, nor was it offered for the purpose of contradiction, but for the sole purpose of "making the record admissible" as an estoppel by adjudication. Nor will the court overlook the fact already adverted to that the bonds were not given to Mosher (folio 98) until 1874, two years after the McPherson suit had been instituted. Counsel for plaintiff in error discusses this question of the admissibility of this evidence as though it were offered for the purpose of contradicting the testimony of these gentlemen. But his own record with especial care guards this point by showing what actually did transpire in the court below, where the admissibility of this evidence was expressly made to depend upon the effect it could or would have upon the admissibility of the record offered, and the court was thereby called upon to determine and did determine this question, and the correctness of the ruling cannot be doubted.

It is not true as counsel contend that the mere possession of these bonds at the time of the trial, and their introduction in evidence (the record shows, folio 147, the purpose of their introduction), shows that John Mosher was then the owner thereof, or had any right whatever to bring or defend suits on account thereof. This would not be the presumption aside from the uncontradicted testimony already in evidence before the court and jury as to how Mosher came into possession of the bonds. None of the authorities cited by opposite counsel sustain the position that authority to bring a suit is shown by the simple fact of possession of negotiable paper by the party bringing the suit where the ownership is in

another. It is true that possession is one indicia of ownership, and it is further true that it is *prima facia* sufficient to show ownership. But it is not true that Joel Stone is even *prima facia* bound by the adjudication in this suit, by the simple fact that John Mosher produced these bonds at the trial thereof and was in possession of them. But we do not care to discuss this question, for it is not presented by the record. The question presented by the record is this: Joel Stone had testified that in 1869 and 1870 he purchased and took possession of and paid for all these bonds except those held by Chappel and Leach, and that he had them continuously in his possession up to the year 1874, and that he then loaned them to John Mosher upon Mosher's request, and that he thereafter received them back into his possession. That he never authorized Mosher or any one else to bring or *defend* any suit for him or in his name, or in his behalf. That he never had any knowledge that any such suit ever was brought, and that Porter & Moir never were his attorneys or authorized to act for him in any way. All of which testimony stood before the court uncontradicted. Did the bare fact of the possession by Mosher, thus explained by the uncontradicted testimony of Joel Stone, and which possession was not *inconsistent* with the ownership in Stone, or with any part of his testimony, make admissible and binding upon Stone a record with which he had nothing to do and over which he had no control whatever and no knowledge even of the pendency of the action until years after it was disposed of; or, to put the question in another way, suppose that this testimony had been admitted, showing that Mosher on the trial of this suit of *McPherson et al. vs. Foster Bros.* was in possession of and offered in evidence for certain purposes these bonds. What then; the testimony given by Joel Stone still stands uncontradicted. The testimony of Chappel, Leach and Nash still stands uncontradicted. There is not even an offer to contradict it. It is not inconsistent with the possession, at this trial by Mosher of these bonds. It is true that Nash and Chappel

testify with respect to bonds 3, 4, 11, and 14, that these particular bonds were in their possession during the time when it was proposed to show that they, with the Stone bonds, were in the possession of John Mosher, and to that extent it may be said that the testimony would have shown that Mosher was in possession of all the bonds in suit. But this, as we have before said, would not have contradicted the evidence that Leach and Chappel then *owned* these bonds. But again, it must not be forgotten that this testimony as to the possession by Mosher of these bonds at the trial of that suit was limited in the offer made to the court, to the one purpose of making the McPherson record admissible. Therefore it cannot be considered in one of the aspects in which it is presented by counsel for plaintiff in error. If it did not, under the testimony, that it was not proposed to contradict, and which was then before the court and jury, render admissible, as an adjudication of the rights of Joel Stone, the record in the suit of *McPherson vs. Foster Bros.* under the plea of former adjudication, then the testimony had no place in the record and was not offered to occupy any other place than that ; and inasmuch as it was not admissible for that purpose, and would not have the affect of rendering the record admissible for any purpose against Stone, the court had nothing to do but to exclude it and to exclude the record as well.

In this connection we again call attention to the language of the bill of exceptions (folio 185). After referring to the offer to show that Mosher had possession of the bonds at the trial, it proceeds : "Which offer was made for the purpose of making said record admissible, to which *offer of the record* the plaintiff *still* objected as immaterial and incompetent, which objections were by the court sustained, and the *record excluded*." Thus it will be seen that the evidence objected to and excluded was the record, and that only, and that it was not rendered admissible by the offer of the testimony in question.

There was nothing therefore for the court to do, there being

no other testimony offered, but to leave to the jury, as it did the matter of the special findings, for them to find according to the fact as shown by the testimony in the record, and indeed there was but one state of facts they could find under the testimony, and that they did find, not by direction of court but as findings from the testimony, although the court would have been fully justified in directing the special findings as well as the general verdict thereon. (See folio 194.) We say, therefore, that neither the Independent District nor Joel Stone were parties to the record offered, or could be made so by the testimony offered, and of course unless they were both parties thereto it cannot bind either of them.

AS TO THE VALIDITY OF THE BONDS.

We next notice the question as to the validity of the bonds in view of the constitutional limitation. This constitutional limitation is as follows (see Art. II, Sec. 3).

"No county or other political or municipal corporation shall be allowed to become indebted in any manner or for any purpose, to an amount in the aggregate exceeding five per centum on the value of the taxable property within such county or corporation, to be ascertained by the last state and county tax lists previous to the incurring of such indebtedness."

The authority to issue negotiable bonds of the kind in question, under the provisions of Chap. 98, Laws 12th General Assembly of the State of Iowa, 1868, will not be denied. Not only is the power to issue bonds expressly given, but it is expressly provided that they shall be "negotiable bonds" and shall be for sale upon the markets of the world, and the very express purpose and object of the law was to enable the districts to issue and sell an obligation that should be negotiable and transferable in the market for the purpose of raising money for the purposes indicated in the law. In addition to this, this chapter 98 and the very first section of the chapter already hereinbefore set out, expressly provides as follows:

"No district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district."

This is in exact accord with the constitutional limitation. We therefore have a case where the power to issue bonds exists and is expressly conferred by law; where the power and the right to make it a negotiable instrument is conferred by the very language of the statute and where the purpose of the law is to enable the district to issue a negotiable obligation for the purpose of selling it upon the market to raise money to be paid into the treasury of the district. We have also a case where there is a limitation not only in the constitution but the precise constitutional limitation is engrafted by the repetition of its terms in the enactment authorizing the issue.

The next step under the authorities and in the long line of decisions of the Supreme Court of the United States, is to look at the recitals in the bond. And what are they: Omitting the formal parts we have the following:

"This bond is issued by the board of school directors by authority of an election of the voters of said school district held on July 31, 1869, in conformity with the provisions of Chapter 98, Acts 12th General Assembly of the State of Iowa.".

We must decline to enter the lists with opposite counsel for a rediscussion of the many question that have heretofore been before this court and settled by authority of the many decisions upon them. Going at once to the case of *Buchanan vs. Litchfield*, 102 U. S., 278, we find that the very case referred to by the court in that opinion as being a case that would constitute one of the exceptions to the rule there laid down, or, perhaps, more correctly speaking, falling within the *rule* there laid as to the effect of recitals in bonds, is the case here presented to the court. The court in that case in discussing the authorities bearing upon the question, use the following language:

"The cases cited by counsel for plaintiff do not assert any different doctrines, as will be seen from an examination of those chiefly relied upon. In *Commissioners of Knox County vs. Aspinwall* (21 How., 539), which was a case of municipal subscription of stock in a railroad company, the statute upon which the subscription there purported to rest made the existence of certain facts essential to the exercise of authority to make the

subscription and issue bonds therefor. The bonds upon their face, however, recited that they were issued *in pursuance of* the statute, which prescribed the conditions precedent to any subscription, and therefore the court said they imported a compliance with the law under which they were issued. It was consequently ruled that the purchaser was not bound to look further for evidence of a compliance with the condition annexed to the grant of the power.

We call attention to the fact that the words "in pursuance of" are italicized in the original opinion of the court and not by us, and it contains the very thought that is the all controlling one in the case of *Buchanan vs. Litchfield*, and in the case at bar, to the effect that where the recital of the bond is that it is issued in conformity with the statute, and where the statute itself contains the limitation in question, the effect of such recital in the bond is to convey to the purchaser thereof the thought that the bond has been issued within the limits of the limitation imposed by the statute and by the constitution. This same thought is again given expression in the same opinion on page 292, in the following language:

"Consequently a recital that the bonds were issued under the authority of the statute, and in pursuance of the city ordinance, did not necessarily import a compliance with the constitution. Had the bonds made the additional recital that they were issued in accordance with the constitution, or had the ordinance stated, in any form, that the proposed indebtedness was within the constitutional limit, *or had the statute restricted the exercise of the authority therein conferred to those municipal corporations whose indebtedness did not, at the time, exceed the constitutional limit, there would have been ground for holding that the city could not, as against the plaintiff, dispute the fair inference to be drawn from such recital or statement as to the extent of its existing indebtedness.*"

This decision in the case of *Buchanan vs. Litchfield* goes as far toward invalidating municipal obligations perhaps as any that has been rendered by the court, and yet in words so apt and language so clear the case at bar is taken out of its operation, or rather is placed within the rule there laid down as to what would be a valid obligation, that it may be said that the cases there put by way of illustration are literally on all fours with the case at bar.

We cite further upon the exact point in the case at bar the case of *Bonham vs. Needles*, 103 U. S., 648. The court in that case, among other things, says:

"The statutes which we have mentioned conferred, as we have shown in *Harter vs. Kernochan*, ample authority upon the township to issue bonds in payment of the donation voted, the qualified electors assenting thereto, at a regular or special town meeting. The bonds recite that they were issued *in pursuance of the authority* conferred by those statutes. Such recitals impart a compliance with the statute, and the township, according to the *uniform* decisions of this court, is estopped to assert as against a *bona fide* holder for value, that such recitals are untrue. *Buchanan vs. Litchfield* (102 U. S., 278) and authorities there cited."

We cannot add by elaboration any force to these cases.

We cite without reviewing the many cases that have been before this court announcing the principles sustaining the validity of such obligations as those now in suit and with respect to the extent and limitation of the doctrine of estoppel and the effect of recitation in bonds, and, with great respect for opposite counsel, we do not think it would be profitable to discuss with them the questions set at rest by these decisions:

Marcy vs. Twp. of Oswego, 92 U. S., 637.
Town of Coloma vs. Evans, 92 " " 484.
Town of Venice vs. Murdock, 92 " " 494.
County of Warren vs. Marcy, 97 " " 96.
Com'r. &c. vs. January, 94 " " 202.
Com'rs. &c. vs. Bolles, 94 " " 104.
Humboldt vs. Long, 92 " " 642.
Wilson vs. Salamanca, 99 " " 499.
Pompton vs. Coopers' Union, 101 " " 196.
Buchanan vs. Litchfield, 102 " " 278.
Bonham vs. Needles, 103 " " 648.
Clay Co. vs. Society for Savings, 3 Morrison's Trans., 662.
County of Moultrie vs. Fairfield, 4 Morrison's Trans., 140.
Ins. Co. vs. Bruce, 4 Morrison's Trans., 664.
Ottawa vs. Bank, 4 " " 679.

Counsel make an exceedingly narrow, technical objection to the language of the recital in the bonds in suit by claiming that the true construction of the language is that the recital is simply to the effect that the *election* was held in conformity with the statute, and not that the bond was issued in conformity therewith. This point was also made in the court below, but was regarded as unworthy of notice by the court. It is altogether too fine a sight as we submit for the ordinary purchaser of negotiable paper. It is an unnatural and strained construction of the language used. The plain and evident meaning, whether considered grammatically or otherwise, of the sentence is, that the authority of the board of school directors was the election of the voters held on the 31st day of July, 1869, and that thus clothed with authority by virtue of the election, the bond was issued by them in conformity with the provisions of Chapter 98, Acts 12th General Assembly of the State of Iowa.

To say that pains were taken to recite the fact that the *election* was held in conformity with the statute, and that the *bond* was issued pursuant to authority of such *election* only, instead of in conformity with the *law*, is to attribute a small degree of intelligence to the officers issuing this obligation. Not only so, but the election was only one of the many requirements of the statute. A selection of a school-house site, and many other requirements are enjoined by law. It was the evident intent and purpose of the officers executing this bond to declare that it had been issued in conformity with the law authorizing its issue. It is not reasonable to suppose that they spent all this language to declare to the holders not only that an election had been held, but that it (the election) had been held in conformity with the law, thus exhausting all the words of which they make use to declare the existence of only a small portion of those prerequisites required by law preliminary to the issue of the bond.

Not only so, but the words "in conformity with the provisions of Chapter 98, &c.," are general. They are used in a

general and not a limited sense. They do not mean such only of the provisions of that chapter as relate to elections, but all of the provisions of the chapter. The construction claimed simply makes the language used a trap for the innocent purchaser of the bond. The perusal of the bond and its recitals would not convey any such narrow and limited meaning as is claimed. Tested by well established rules no difficulty can arise here.

But we might do the useless thing of going one step further with counsel to show that even if he were correct in regard to his interpretation of the meaning of the recitation in the bond the result would still be the same, for under the law the holding of an election in conformity with this law necessarily involves the voting upon the proposition to bond the district after the school-house site is obtained, and after the district is ready to erect its building, and after it has been determined *what amount* shall be voted. For the statute provides that the amount so to be borrowed is involved in the proposition submitted to and voted upon by the people, and necessarily connected with these must have been determined that the amount thus voted is in conformity with the law; is the amount which might lawfully be voted within the limitations imposed by law. But we need not consider this point further.

The last point discussed by counsel, commencing on page 36 of their printed brief, we do not notice or discuss, because all the questions made therein are fully met and decided in the former decisions of this court, and we are not able to quite understand why they should have been placed in the brief of counsel at this late day.

One thing we will be excused for saying in view of the remarks of counsel for plaintiff in error. In their brief it is stated that this case "involves the all of their clients, and may result in confiscating one-third of the property of every tax-payer in the district." This is delightfully drawn solely from the imagination of counsel. The fine school building

that graces the prosperous Independent School District of Steamboat Rock, which was built and completed by the use of the fund obtained from the sale of these bonds (see the testimony set out in the record offered), and which is still in use in the precise form in which it was then erected, and the valuable property located within this Independent District which is the subject of remark of every traveler over the line of railway that passes through it, is a standing refutation of the statement that the question of the validity of this issue of bonds involves any considerable amount or percentage of the property of this district. It has obtained and used and enjoyed for years the proceeds of these bonds. It is amply able to pay them now. There is no equity in the defense, and we think the legal questions involved are so clearly with us that we cannot otherwise than confidently ask an affirmance of the case.

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